PROCEEDINGS, PRECEDENTS, AND ARGUMENTS, ON

Claims and Controverſies,

CONCERNING

Baronies by Writ, and other Honours.

WITH THE

Arguments of Sir FRANCIS BACON, Sir HENRY MONTAGU, the Lord Chief Juſtice CREW, the Lord Chief Juſtice BRAMPSTON, Judge DODDERIDGE, Judge ROLLES, Mr. SELDEN, Sir HENEAGE FINCH, Mr. MONTAGU, (afterwards Lord Chief Baron) Sir WILLIAM JONES, Sir WILLIAM DUGDALE, Mr. OFFLEY, Sir EDWARD NORTHEY, Sir THOMAS POWIS, and others.

Publiſhed from the Collections of ROBERT GLOVER, Eſq; Somerſet Herald, Sir WILLIAM DUGDALE, Garter King of Arms, GREGORY KING, Eſq; Lancaſter Herald, SAMUEL STEBBING, Eſq; Somerſet Herald, PETER LE NEVE, Eſq; Norroy King of Arms, and others.

By ARTHUR COLLINS, Eſq;

WITH

An APPENDIX, containing ſeveral Papers copied from the Bodleian and Aſhmolæan Libraries, at Oxford, &c.

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Claims and Contingencies,

OR

ARGUMENTS

AND

PRECEDENTS

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WITH THE

Baronies by Writ of Antient Honours.

PREFACE.

HAVING for ſome years made Collections in order to perpetuate the memory of thoſe illuſtrious perſons who have been advanced to the Peerage of this Kingdom, from whoſe conduct and actions, obſervations may be made for regulating our own, and after ages be excited to an imitation of their exemplary virtues.

In my ſearches for the better informing my ſelf, of thoſe whoſe riſe have been thro' HEIRS FEMALE, or HEIRS GENERAL, from great and noble families; I met with collections of Precedents relating to BARONIES and other HONOURS; and communicating them to thoſe noble Peers, more immediately concerned, the learned in the laws, and other judicious perſons, have been prevailed on to make them publick.

GREGORY KING, Eſq; Lancaſter Herald in the reign of King WILLIAM the third, had made collections of many of theſe Precedents, with deſign to publiſh them; but lived not to perform it. His manuſcripts afterwards falling into the hands of Mr. STEBBING,

STEBBING, Somerſet Herald, were on his death purchaſed by Mr. Auditor JETT, and on his deceaſe, *Anno* 1731, expoſed to ſale by publick auction, when I had the good fortune to get poſſeſſion of ſuch of them, as relate to this Work.

But as I have cited the authorities for my Collections, it will appear that I have had recourſe to whatever has been wrote on this ſubject. And I humbly hope, that noble body, THE HOUSE OF PEERS, will think the arguments, here ſet forth, of ſome uſe, in ſetling ſuch abſtruſe points, relating to BARONIES, and other HONOURS, as may be brought before them.

PROCEEDINGS, PRECEDENTS, AND ARGUMENTS, ON Claims and Controverſies, About Baronies by Writ, and other Honours.

The claim of RICHARD BERTY, *eſq; to the barony of* Willoughby.

THE title of RICHARD BERTY, eſq; to the ſtile of lord Willoughby of Willoughby and Eresby, in the right of the lady CATHERINE dutcheſs of Suffolk his wife, debated before the right honourable the lord Burghley lord high treaſurer of England, the earl of Suſſex lord chamberlain of the Queen's Majeſty's houſe, and ROBERT earl of Leiceſter, commiſſioners, by her Majeſty appointed for the ſame purpoſe. Ex MS. Not. B. 21. in Bibl. Joh. Anſtis, Arm. Gart. Reg. Arm.

There is alſo in the end added a reſolution of certain queſtions, although none of them were objected before the commiſſioners.

Alſo it is to be conceived, that every thing was not before the commiſſioners, ſo amply recited as is here ſet down, but only the moſt material arguments.

Firſt, the ſaid RICHARD tendereth his claim, and groundeth the ſame on the antient and laudable cuſtom of this realm, conſonant to the realms of France and Spain, and their dominions, where women are capable of feodals, that the husbands in right of their wives, poſſeſs their feodals, dignity, ſtiles, and titles.

That cuſtom is a ſufficient, yea, and the chiefeſt rule to determine this queſtion, he proveth by the common principle, *Conſuetudo in unaquaque regione eſt omnium dignitatum et juriſdictionum origo, forma et principium.* And ſo by BALD: *Conſuetudini ſtandum eſt diſponenti de nobilitate, et conſuetudines loci faciunt quem nobilem qui aliis non eſſet nobilis.*

To prove the antiquity and continuance of that cuſtom in this realm of England, he ſheweth an abſtract by the heralds, out of many examples in every King's reign, chooſing of many, one perſon having the dignity of a baron, by the right of his wife, as followeth.

The names of certain perſons, that in right of their wives have enjoy'd the title and dignity of barons, and by that right have been called to parliament as barons, in every King's government ſince the conqueſt.

Temp. W. Conq. JOHN TALBOT, a Norman, came in with the Conqueror, and married MAUD, daughter of RICHARD lord TALBOT, of Longhope in England, in whoſe right the ſaid JOHN was lord Talbot of Longhope, of whom the earl of Shrewsbury is deſcended.

Will. Ruf. EUSTACE FITZ JOHN, the ſon of MONOCULUS lord of Knaresborough, married BEATRIX, daughter and heir of JOHN lord Veſcy, in whoſe right he, the ſaid EUSTACE, was lord Veſcy, of whom the earl of Cumberland is deſcended. [It's now immerg'd in the daughters and coheirs of THOMAS, earl of Thanet.]

Hen. I. JOSSELYNE, ſon and heir to the duke of Brabant, married AGNES, daughter and heir to WILLIAM lord PERCY, in whoſe right he was lord Percy, of whom deſcends the earl of Northumberland. [Heir to whom is the preſent earl of Hertford.]

Rex. Steph. MAURICE FITZ HARDING, married ALLICE, daughter and heir of ROBERT, lord Berkley, in whoſe right he was lord Berkley, of whom the lord Berkley deſcendeth. [Whoſe heir is the now earl of Berkley.]

Hen. II. JOHN MOULTON, knt. married MAUD, daughter and heir of WILLIAM MESCHINES, lord Egremount, in whoſe right he was lord Egremount, whoſe heir general was married to the lord FITZWATER, of whom deſcendeth the earl of Suſſex, and writeth himſelf lord Egremount. [Heir to whom is the preſent earl of Fitzwalter.]

Rich. I. ADAM DE PORT, lord of Baſing, married ISABEL, daughter and heir of ROBERT HAYA of Halvaa, in whoſe right he was lord Haya of Halvaa, of whom deſcended the lord ST. JOHN of Baſing, anceſtor of the marquis of Wincheſter. [Heir to whom is the now duke of Bolton.]

Rex John. JOHN DE PLACITIS, married ALLICE, daughter and heir of WALERAN, earl of Warwick, in whoſe right he was earl of Warwick; after whoſe death, without iſſue, ſhe married again to WILLIAM MANDUYTE, baron of Hanſlap, who was alſo earl of Warwick in her right, of whom are deſcended the earls of Huntington, Warwick, Leiceſter, and others.

Hen. 3. HENRY HASTINGS, knt. married JOAN, daughter and heir of WILLIAM CANTELUPE, lord of Abergaveny, in whoſe right he was lord Abergaveny, of whom deſcended LAURENCE HASTINGS, lord Abergaveny, and after earl of Pembrook, in EDWARD the third's time.

Edw. I. ROGER lord Clifford, married ISABEL, daughter and heir of ROBERT VIPONT, lord of Weſtmorland, in whoſe right he was lord of Weſtmorland, of whom deſcends the earl of Cumberland.

Edw. II. Sir JOHN CHARLTON, knt. married HAWYSE, daughter and heir of OWEN AP GRIFFITH, lord of Powys, in whoſe right he was lord of Powys.

Edw. III. JOHN FITZ ALLEN, ſecond ſon to RICHARD, earl of Arundel, married MARY daughter and heir of JOHN lord MATRAVERS, in whoſe right he was lord Matravers, of whom deſcends the earl of Arundel.

Rich. II. Sir WARREN GERRARD, knt. married ISABEL, daughter and heir of JOHN lord LISLE, of whom deſcends the earls of Rutland, Warwick, and Leiceſter, *&c.*

Hen. IV. Sir WILLIAM LOVELL, knt. married ELEANOR, daughter and heir to JOHN lord MORLEY, in whoſe right he was lord Morley, of whom deſcendeth the lord Morley.

Hen. V. JOHN TUCHET, knt. married JOAN, daughter and heir of NICHOLAS lord AUDLEY, in whoſe right he was lord Audley, of whom is deſcended the lord Audley.

WILLIAM BOURCHIER, third ſon of WILLIAM BOURCHIER, earl of Ewe, married MARGARET, daughter and heir to RICHARD lord BERNERS, in whoſe right he was lord Berners. Hen. VI.

EDWARD GREY, knt. married ELIZABETH, daughter and heir of JOHN TALBOT, viſcount Liſle, in whoſe right he was viſcount Liſle. Edw. IV.

GEORGE lord STANLEY, ſon and heir to THOMAS earl of Derby, married JOAN, daughter and heir of JOHN lord STRANGE of Knoking, in whoſe right he was lord Strange, of whom the earl of Derby is deſcended. Hen. VII.

Subſcribed by GILBERT DETHICKE, alias Garter principal king of arms, and by ROBERT COOKE, alias clarentiaux king of arms.

The names of divers perſons taken out of an infinite number in other realms, which, in the right of their wives, have enjoyed all manner of noble and princely titles and ſtyles.

OTHELYN, earl of Burgoyne, was in the right of his wife earl of Arthoys.

PHILIP the long, was in the right of JANE, daughter to the aforeſaid OTHELYN, earl of Bourgoyne.

King HENRY, of England, the II^d^, was in right of ELEANOR, his mother, duke of Guienne and earl of Poitou.

EUDO, duke of Bourgoyne, was, in right of JANE his wife, daughter and heir to PHILIP le long, and JANE his wife, earl of Bourgoyne.

PHILIP, ſon to EUDO, was, in right of JANE his wife, earl of Arthoys and Bologne.

WILLIAM GODFREY, in the right of his wife, was earl of Tholouſe.

ARCHEMBALD CAPEA, was in the right of his wife ISSABEL, ſiſter and heir of MATTHEW CASTILLAN, earl of Foix.

PHILIP le grand, earl of Flanders, was, in the right of ELISABETH his wife, earl of Vermandoys.

BALDWYN, earl of Heynalt, was, in the right of his wife MARGARET, ſiſter and heir to earl PHILIP, earl of Flanders.

FERNAND, ſon of SANCLIFF king of Portugal, in the right of JANE his wife, was earl of Flanders.

THOMAS of Savoy, ſecond husband to the ſaid JANE, was in her right (though he had no iſſue by her) earl of Flanders.

GUILLAN DE DAMPIERRE, was, in the right of MARGARET his wife, ſiſter and heir to the aforenamed JOHANNA, earl of Flanders.

MAXIMILIAN, archduke of Auſtriche (before he was elected emperour) was, in the right of MARY his wife, the heir general (of CHARLES, duke of Burgogne, and ISABELL of Burbon) duke of Burgogne, of Lotrich, of Brabant, of Limbourg, Luxemburgh, earle of Flanders, Arthoys, Bourguigne, Heynalt, Holland, Zealand, Namur, lord of Salignes, and Malignes.

PHILIP of Burgogne, by BONA his wife, was earl of Eu.

GODFREY, duke of Bovillon, in the right of MAUD his wife, was head lord of Heturia, marquis of Ancona, Piſa, and Luques.

HUGH, ſon to HENRY the I^ſt^. king of France, was, in the right of his wife, earl of Vermandoys, and RALPH his ſon, by his mother's right, was earl after him.

PETER, earl of Alençon, in the right of MAUD his wife, was earl of Bloys.

HUGH, earl of St. Paull, was, in the right of MARY his wife, earl of Bloys; and JOHN their ſon, by deſcent from his mother, earl of the ſame.

HIDBERT, ſurnamed Blanchemanes, earl of Brittayne, and ſo was GEFFRY PLANTAGENET, in the right of his wife CONSTAUNCE.

GUY, earl of St. Paull, was, in the right of his wife, earl of Nevers; and ſo was ADOLPH, duke of Cleves, earl of Nevers in right of his wife.

CHARLES the IId. of France, was, in right of SUSAN his wife, Duke of Bourbonnois, of Auvergne, earl of Clermont, of Foreſts, of Marche, viſcount of Carlott and Marrott, Beavioloys, peer and chamberleyn of Fraunce.

EMANUELL PHILIBERT, now duke of Savoye, in right of his wife's apanage, is duke of Berry.

The prince of Orange, that now is, was by his wife, while ſhe lived, earl of Bure, and their ſon now earl by his mother's right.

After all theſe examples which were written, but not read over for lack of time, the ſaid RICHARD BERTY deſcended to more particular proofes by matter of record, that the aforeſaid cuſtomes had ever taken place in the baronys of Willoughby and Eresby, viz. ſir RICHARD WELLES, ſon of the lord WELLES, was lord Willoughby, in the right of JOHAN his wife, daughter and heir of ROBERT, lord Willoughby.

And alſo Sir RICHARD HASTINGS, knt. in the right of JOHAN his wife, daughter and heir of the ſaid RICHARD WELLES and JOHAN, was both lord Welles and Willoughby, reputed, called, and written, immediately after the death of RICHARD WELLES, lord Welles and Willoughby.

Then the commiſſioners demanded of Garter, whether he knew thoſe allegations to be true? who anſwer'd, that he thought both WELLES and HASTINGS uſed the ſtyle of lord Willoughby, but not in right of their wives, but rather as being call'd by writ to parliament. Whereunto the ſaid RICHARD BERTIE replied, That the ſame ſuppoſition might eaſily be diſproved, by computation of the time of the death of the lord ROBERT WILLOUGHBY with the time that the ſaid RICHARD WELLES took on him the name of lord Willoughby, which he did immediately after the death of the lord ROBERT, before any parliament, as by court-rolles and other evidences then preſent, was manifeſted. And the like was alledged and proved by ſir RICHARD HASTINGS, who uſing both the titles of lord Welles and Willoughby, immediately after the death of RICHARD lord WELLES, could not, after the forme of the writt, be ſummoned but by the denomination of one of the baronies. Then he muſt of neceſſity be reputed to uſe the other in right of his wife.

And alſo if RICHARD WELLES and RICHARD HASTINGS had been by writt created, then ſhould the dignity have deſcended to the heirs of WELLES and HASTINGS, and not have reverted to the houſe of WILLOUGHBY, neither could CHRISTOPHER WILLOUGHBY, the grandfather, nor WILLIAM lord WILLOUGHBY, the father to the DUTCHESS, have uſed as they did (and may be proved by evidence and matter of record) the ſtile of lord Willoughby, before they were called by writt to parliament.

Furthermore, immediately after the death of WILLIAM lord WILLOUGHBY, the ſaid DUTCHESS, as his ſole daughter and heir, enjoyed the title and ſtile of lady WILLOUGHBY, deſcended to her from her father. At which time ſir CHRISTOPHER WILLOUGHBY, knt. younger ſon to the lord CHRISTOPHER, and brother to the lord WILLIAM, claimed the dignity as heir male, and the claime being heard, the title was adjudged to the lady CATHERINE, now dutcheſs.

Alſo ſir WILLIAM WILLOUGHBY, knt. ſon to ſir CHRISTOPHER, when he was to be created baron, ſued to be created lord WILLOUGHBY of Willoughby and Eresby, which was denied him, for that both the baronies and the titles were the inheritance of the lady CATHERINE, and therefore he was created lord of Parham.

Then one of the commiſſioners uſed this argument.

A baron is to be a counſellor in the weightieſt cauſes of the realme, and to ſit with the prince in the high court of parliament, an office and place unfit for a woman.

It repugneth to law and reaſon that a baroneſs ſhould be deprived of her dignity, which is parcell of her inheritance, becauſe ſhe is unfit for parliament, even as an infant king is not to be depoſed for his infancy. The law hath better conſideration both for the one and the other; for the king's infancy by the ripe age of councellors, and the woman's ſex by her husband is to be ſupplyed, and of this are many examples.

Firſt, The law permitteth women to hold their lands by knight's ſervice and grand ſerjeanty, offices for that ſex more unapt then place in conſultation-houſe, for wiſdom is not ſo much by nature denied them, as ability to perform thoſe martial ſervices. But the law conſidering that their ſervices may be done by their husbands in their wives right, reſteth ſo ſatisfied.

It remaineth by record that JOHN of Gaunt, in the right of BLAUNCHE his wife, was lord ſteward of England, and by expreſs words claimed the exerciſe of this office at the coronation of king RICHARD the ſecond, as then being tenant by the courteſy of England of his wife BLAUNCHE's inheritance, and ſo was received.

At the ſame time JOHN DYMOCKE claimed likewiſe, as tenant by the courteſy of England, to be the king's champion, and was admitted. And then alſo MARGARET, counteſs of Norfolk, daughter and heir of THOMAS BROTHERTON, late earl of Norfolk, claimed to be counteſs marſhall of England, as parcel of inheritance to her deſcended, and prayed licence to execute the office by deputation.

By theſe arguments it is evident, that the husband is by law appointed to perform the ſervices due by the wife. Therefore every reaſon to the contrary is againſt the law, yea, and injurious to the ſtate and lords of the fellowſhip. For it is more beneficial for the commonwealth, that he which hath a barony in the right of his wife, ſhould rather adorn the realm with it then live obſcurely.

And whoſo holdeth opinion that creation of new barons is neceſſary, he muſt confeſs, that not to retain the antient is againſt all policy, for the greater the number of the nobility there is, the greater is the honor of the prince, the greater is the ſervice of the commonwealth.

Moreover it is plaine, that the ſaid RICHARD WELLES, RICHARD HASTINGS, CHRISTOPHER lord WILLOUGHBY, and WILLIAM lord WILLOUGHBY, were not created by writ, becauſe they took their places after the antiquity of the baronies of Willoughby and Eresby.

Likewiſe ſir EDWARD NEVILL was lord of Abergaveny by his wife, and ſo took his place; and if any will ſay that he was not in right of his wife, but by writt, which is eaſy to be prov'd falſe, then his place ſhould be inferior to all of that time. If any will object that the baron newly created ought to poſſeſs the place of the laſt deceaſed, common reaſon and uſage to the contrary confuteth him. For it might happen that a duke or earl dyed without heir, laſt before the new created baron, or ſix or ſeven before, died without heirs, ſo the highneſs of the one, and the multitude of the other, ſhould breed number and queſtion. And there have died ſome dukes that were no barons, whoſe place ſuch new creature might not poſſeſs.

From our cuſtoms digreſſed to the civilians, affirming, how that they hold that women are incapable of baronys, and all higher dignitys in their own right: Therefore their husbands, nor children cannot claim from them that right which they have not.

Albeit for the moſt part, the manner of tryals in queſtion of nobility and chivalry, have not been by jury, after the courſe of the common law, but by depoſitions and proofs after the manner of the civil law, and therefore the conſtable and marſhall of England have uſed to call divers doctors to aſſiſt them: Yet always the iſſues ought to rely on the cuſtoms of chivalry uſed within this realm, and not at Rome, as may appear out of the authoritie alledged by the

civill laws. And to this effect for Spain, JOHN of Otalara uſeth theſe words, *Cauſæ nobilitatis ſunt mere peculiares, noſtræ Hiſpaniæ, & quodammodo, ſunt anomalæ, ideo non poſſunt proprie determinari per leges Romanorum ſed de jure noſtro, &c.* The form of Roman nobility with that of our time cannot be confirmed, it is ridiculous how ſome groſs-headed civilians, ſweat by violent interpretations to work it, but all in vain.

In antient time the patricians and ſenators, of which conſuls and prætors were choſen, were the only nobility of Rome, and that nobility deſcended from the father, as well to the children female as male, and both ſexes were eſteem'd of the ſame degree of nobility that their elders held *uſque ad pronepotem*, wherein the Germans follow them, but we nothing at all, for all children with us hold not their parents degree. And the ſtopp in deſcent is contrary to our cuſtom. And as the cuſtoms of England alway diſſented greatly from the Romans, ſo at this time Rome and Italy itſelf differeth as wide as heaven from earth, from their firſt and former cuſtoms and rights of nobility and dignity; for in thoſe the title of duke, and earl, denoted an office and dignity in camp, and that of earl, was abaſed to baſe offices, as of metalls, granary, and workes, and the title of a baron was not yet hatched, and therefore not to be directed by thoſe lawes.

Sithenes the tranſlation of the empire, thoſe dignities of offices are become dignities of patrimony, and in divers places the dignities annexed to the patrimonies: Therefore thoſe provinces which allow women to ſucceed in feodales, and in their parent's patrimonies, as in dukedomes, earldoms, baronys, (greater things to poſſeſs then the bare titles and names of them) in granting them the more by congruity, yeilded to them the leſs: and ſo the ſtiles of dignity are become parcel of inheritance and patrimony, and may not be taken by the prince from them, no more than any other inheritance, but by way of forfalture, eſcheate, or extinguiſhment. Of this latter forme of nobility and dignity, the doctors determine, that if it be *conjuncto feodo ut deſcendetur*, to whom the fee deſcendeth, if it be *reparata a feodo*, then it deſcendeth after the cuſtom and manner of every province and region. As in Brittain from the beginning, contrary to the common law by their provinciall cuſtom, noble fees are not hereditable only to noble perſonages, but to ignoble and private perſons and their race, being lawfull proprietaries of them. JOHN THOMAS FREIGIUS writeth, that univerſally *feodum nobile eſt quod poſſeſſorem ſuum nobilitat vel eum qui antea erat nobilis oſtendit. Ut feoda quibus reges, duces, marchiones, &c. ab imperatoribus inveſcuntur aut quæ a ducibus vel marchionibus comparantur.* And JOHN PAPON, for all his curioſity and niceneſs, to admit ſo much as is expreſſed by JOHN THOMAS, concludeth, that *a roturier* no gentlemen enabled to hold a dutchy, marquiſate, county, or barony, is thereby ennobled, and is to enjoy the dignity and ſtile, yet he doth deny ſimple fees to conferr nobility; and of the ſame mind is BASIUS, meaning by ſimple fees thoſe inferior to a barony: But BON DE CURTIT, in his treaty of nobility, teacheth, that every antient fee, in degree exceeding the tenure of burgage, ennobleth the poſſeſſor. He calleth ſuch a fee antient, as hath continued four generations in the family.

BARTHOLUS gathereth in this ſort upon the maxim in the civil law, that is, the maſter inſtituting his bondman his heir, thereby enfranchiſeth him, ſo likewiſe the prince receiving homage for the fee, which one no gentleman holdeth of him, maketh him thereby a gentleman. Albeit the fee have no dignity annexed to it, which ſeemeth to vary from the antient rule of nobility among the Romans, and alſo from our manner and cuſtome. But that fees of dignity do ennoble the proprietor, no man in any age of ripe judgment hath thought worthy the queſtion, but a truth generaly receiv'd.

But foraſmuch as our caſe ſpecialy is for the title of a barony, a dignity never in uſe among the old Romanes, and therefore out of their rules, it is expedient to ſearch out the original of that dignity; firſt, by all reaſonable conjectures, barons ſeem to have been the chiefeſt captains of people ſeeking habita-

tion, or conqueſt, which have divided the country ſought by them amongſt themſelves, every man having juriſdiction within his own territories; and lived together in that equality of dignity either under an head, or without an head. And in all kingdomes well governed, there hath been always certain as it were pillars of the ſtate, for counſell, government, aſſiſtance, and defence, which were for the moſt part equal in authority, and therefore termed *pares regni, pares honores*, and ſhortly *parhones*, and by converſion of P into B baronyes, for theſe two letters are often changed one into the other as purla burla, libbard of a leopard.

Such as the Italians call baroni, the French barons, and we lords, the Dutch terme free heirs, which ſoundeth with us free lords, as having free territories and juriſdictions within the ſame, whereof our court barons are a lively repreſentation. But whence our word lord ſhould have his offspring is more doubtfull, yet, by moſt reaſonable and neareſt conjecture out of Burgundy; for there, in old time, a free territory was termed Alodium, and the word to this day in part retained, and ſuch a poſſeſſor called Alodius, with us a lord, (perſons of this degree call them as they liſt barons) free heirs, or lords, were ever in great veneration, eſpecially in France, and it is thought by men of greateſt judgment, (CHOPPING) that JULIUS CÆSAR, in his commentarys, by the word *Regulus* meant the barons of France; where, at this day, ſome barons contend by antiquity of their baronies, to have place above new earls.

In this realm all earldoms, and baronies, before the conqueſt, were inheritances in fee ſimple, and deſcended to females, as well as to males, and the dignities were annexed to fees; fee tail is but a later invention, and not many before EDWARD III.'s time of the higheſt and princelieſt dignities were entailed.

This ground well conſidered there was no cauſe to ſeclude women in antient times from ſucceſſion in earldoms and baronies, becauſe they are no parliament perſons, for earls and barons, were many years before any parliament in this realm, eſpecialy in ſuch ſolemn order as is now obſerved of three ſtates, which by common opinion was firſt introduced by HENRY III, they err therefore that make parliaments the firſt maker of barons, when barons are rather the firſt maker of parliaments.

The Conqueror at his entry ſuffered divers of the antient baronies to remain as he found them, ſome he gave entirely to his own nobility, ſome to religious houſes the dignity abiding inſeperate unto the fee, which ſo ſtrong conjunctions, that biſhops and abbots thereby receiv'd with the baronies the dignity and ſtile of lords, otherwiſe being incapable of thoſe ſecular ſtiles by the bare dignity of an abbot or prior, for abbots and priors, not indued with baronies, neither uſed the ſtile of lords, neither were ſummoned to parliament, as the wordes in 15 EDWARD III. expreſſe, howe in reſpect of their baronies only abbots and priors owe ſervice in parliament.

I have ſeen antient tranſcripts of writts of parliament which had the word *baroni* in their direction, as, *Rex &c.* JOHANNI *baroni de Greyſtocke*, EDMUNDO *baroni Stafford*, contrary to the form now obſerv'd, which I preſume was uſed for a diſtinction between old and new barons, for in writts of creation, that is to ſay, of firſt ſummons, the king writeth, *Rex &c.* JOHANNI STRAUNGE *de Knocking militi*, naming the mannor, which ſhall always afterward ſtand for the head place of the barony, and whereof the baron and his heirs, ſhall be ſurnamed. And for the change of forme thus much may be alledged, that as perfection of parliament commenced in the days of HENRY III, ſo in his times alſo almoſt all the antient barons were conſumed, partly by tranſlating them into higher degrees, but eſpecialy by the barons wars, which began about the 46th year of his reign, ſo by decay of old, and by plenty of new creations, the writs of creation grew to be a preſident for ſummons, as well of the one as the other, as the like hath happened in divers others writts.

But that there were once ſuch diverſity of writs I am not only perſwaded by the ſight of the tranſcripts, but confirmed by records of inſtitution and order of parliament, declaring how that every earl and baron ought to come to parliament,

and

and alſo their payres, or as we commonly call them, their peeres, which word maketh a plain diſtinction betwixt barons already created, and their peeres which are to receive creation. Then an earl's peer is deſcribed to be ſuch a perſon as poſſeſſeth twenty knights fees, and a baron's peer which hath thirteen knights fees and one third part. In which ordinances we follow directly the ſteps of the Romans; for after their government grew to perfection, none among them were promoted to dignities, but thoſe whoſe ſubſtance were anſwerable to the value aſſeſſed for the capacity of that dignity, and ſuch baronies are holden compleat, and ennoble the poſſeſſors with the dignity.

Likewiſe the new barons created by writ reſemble thoſe which by the Romans were called *Patres Conſcripti*, and the elder barons repreſent the old ſenators. After the ſame manner in France, none might be a baron but he that had four caſtellannes under him, and one hoſpital founded, or a colledge with an authentical ſeal. In elder time to a compleat barony in France, a walled town, five caſtellans, and certain other priviledges were requiſite.

Now concerning the ſtate collated by writ, they are very far from knowledge of cuſtoms and laws of chivalry, which affirm that the dignity of a baron created by writ deſcendeth not to his heir, and that his heir may not uſe the vocation or name untill he alſo be called by writ, and that then it proveth an enheritance.

Whereunto I anſwer; That if the dignity be extinct in the father by natural death, then the ſon indeed needeth a new creation, but now by what reaſon ſhall a new writ of creation work a greater vertue of inheritance in the ſon then it did before in the father? But by the civil law, and all laws at this day, where dukes, earls, and barons, poſſeſs dukedoms, earldoms, and baronies, the dignities are *res patrimoniales*. And eſpecialy that of a baron ever hath been, and ought to be hereditable; for it muſt be confeſſed in truth, that the principal foundation and cauſe of a baron's creation is for the ſervice which he is created and his heirs are bound to do to the realm and prince as a baron, and is enabled to performe by his poſſeſſions, liable to that vocation. And it ſhould be great injury to the crown and regal ſtate, having from the beginning with diminution of itſelf departed with ſo many baronies to ſubjects, to want the honor and ſervice reciprocally due. Alſo it is greater detriment to the parliament and realm to lack ſuch a member in every reſpect compleat for ſervice, then to the heir of the baron, or husband of the baroneſſe, to ſit quietly at home unſummoned.

Envy or diſdain may allow of this policy, but law and reaſon will never yield to it. The civil law rather rejecteth and unnobleth a noble man (a hard caſe) by poverty unabled to ſerve, then omitteth the uſe and ſervice of a man by law and nature ſufficiently qualified. And CASSANES writeth this ſentance, *Si illud ex quo cauſatur nobilitas tranſiit ad poſteros ut regnum ducatus, comitatus &c. tunc in infinitum erit ille nobilis ad quem tranſiit nobilitatis cauſa.*

The care of the law was in BRACTON's time greater for the conſervation of baronies, for the head mannor of a barony (if it were ſufficient beſides) could not be diſmembred by dower, for it was the countenance of the baron, and the law was, and I know no cauſe why it ſhould not be ſo ſtill, that if the king's baron having no iſſue but daughters, and all the eldeſt provided for and beſtowed in marriage in his life, ſhould die, leaving the youngeſt unmarried, the king may diſpoſe ſuch daughter in marriage to any his knights, and ſhe and her huſband ſhall enjoy the whole barony and dignity, and the reſt have nothing.

Fit preſcript. 3 Hen. 8. 3. Fitzherbert.

By the civil law, if the emperor ſignifieth his bare pleaſure, that he will have any perſon to be a gentleman which is none, without mention of his heirs, yet that quality ſhall be interpreted to reach to his children, *quia nobilitas politica eſt hereditaria.* Then it is a very hard conſtruction to make the heir of a new created baron, of worſe condition, then the heir of a new gentleman.

Now for the capacity of women in their own right, to be dutcheſſes, counteſſes, baroneſſes, and their husbands in their wives right, and that women may tranſmit ſuch right to their heirs, albeit by arguments and examples before recited, it be ſufficiently proved, yet to drive the nayle home to the head, I will

ſhew you (the whole proceſſe judicially debated between EDWARD HASTINGS claiming the armes and ſtile of baron Haſtings, as heir male, and the lord GREY of Ruthyn claiming the ſame as heir general from the woman; and ſentence given with the lord GREY under the ſeal of the office. And in that proceſs it is proved and confeſſed that armes and ſtiles are things hereditable. The like judgment was given between the lord LOVELL or LOVETT, and the lord MORLEY, for BURNELL's arms.

Do you not think that king HENRY VIII. and all his councell were perſwaded, that women are capable of dukdoms, earldoms, and baronies, when by his letters patents he created the Queenes Majeſty's (queen ANN BOLEYNE's) mother marchioneſs of Pembroke; and in caſe ſhe had married a ſubject, and by him had iſſue a ſon, ſhou'd not the ſon by deſcent from her have been marquis of Pembrook? yes verily, then if this be undoubtedly true, the contrary is undoubtedly falſe.

But I will obtrude a right learned civilian's ſentence againſt you. (CASSANES) *In beneficialibus ratione nobilitatis ſpectatur genus maternum & ita judicatum fuit per rotam.* CONANUS writeth, that his neighbours the Campaignans drew their nobility only from the mother. Likewiſe PLUTARCH, that the Xanthiens derive their names, their additions, family and pedigree from their mothers, and not from their fathers. By ULPIAN, ſo do *Ilienſes, Delphici & Pontici*, ſo that nobility in the mother, and from the mother, is not *rara avis*. Although ſome Roman law will not ſo liberally allow of it as other regions, yet PAULUS, a man of that profeſſion, ſuppoſeth that women in Rome were not admitted to certain preheminances allowed in other countries becauſe the cuſtom was rather contrary to the then law. For in Greece they gave ſuffrages. And ACCURSIUS upon the text forbidding women to be arbitors, addeth this exception, unleſs they have had the right by long cuſtom: Alſo INNOCENTIUS III. a Roman biſhop, to whoſe cenſure all their laws bow, in an epiſtle willeth, that the awardes made by the French queen, ſhould be obſerved, for that (by approved cuſtom, which is to be received as law) noble women in France have ordinary juriſdictions over their ſubjects. Whereunto PANORMITANUS addeth, that women having ſuch right by inheritance need no authority of cuſtom.

The Pedigree for JOHN lord HASTINGS.

ISABEL daughter to WILLIAM VALENCE, brother to HEN. III. — JOHN lord HASTINGS, — ISABEL daughter of HUGH SPENCER, 2d wife.

JOHN lord HASTINGS. — ELIZABETH, wife to ROGER GREY of Ruthyn.

LAURENCE lord HASTINGS earl of Pembrook. — REG. lord GREY of Ruthyn.

JOHN lord HASTINGS earl of Pembrook, ob. ſ. p. — REG. lord GREY of Ruthyn and Haſtings, by ſentence after JOHN earl of Pembrook.

HUGH HASTINGS.

HUGH HASTINGS.

HUGH, ob. ſ. p. — EDWARD, who claimed to be lord HASTINGS, as heir male, but ſentence was given againſt him.

To be ſhort, if we ſhall admit of opinion ſurmiſed of the civilians, that dignitys deſcend not from women, our moſt antient earls muſt do away and cancel many of their titles, which they and their anceſtors have ever lawfully uſed, as deſcended to them ſithence they were created earls; ſo that by writt they could not receive them (which only conteineth the prince like dignityes) and patents they have none, for kings uſe not to create of earls barons, as the

earls of Arundel writ themselves lord Matravers, the earls of Oxford, lord Badlesmere and Scales, the lord marquis of Dorset, lord Ferrers of Groby, Bonvile, Harrington and Astley, the earl of Cumberland, lord Clifford, Skipton and Vescy. Also some barons have had two baronyes at once descend unto them, as the earl of Lincoln and Clinton and Say; and in the writ the form is to be put but one of them, then the other must fail. Therefore if you will condemn their claim from women, you offer them great wrong. But for such as they enjoy them by great right, this question both by law and use is determined on my side.

By the law of God and not of Rome, abbots and princes in respect of their baronyes have the titles of lords and place in parliament, which otherwise by the dignity of abbot and prior they may not use. And such abbot possesseth the barony not in his own right, but in the right of the abby. And shall not a lay-man, tenent of a barony in the right of his wife, or by the courtesy of England, have like priviledge in the like case, but the law in many things resembleth their condition somewhat like? And for the sons of the baroness the right is stronger, then for the abbot's successor, for the son shall possess the barony in his own right.

To this Garter replyed nothing, but said that there were late examples to the contrary, namely ARTHUR PLANTAGENET was created lord Lisle, and had not the dignity by his wife although she were the heir. And sir JOHN DUDLEY knt. was likewise created lord Lisle, albeit he was son and heir to the lady Lisle. And one Mr. WYMBISH husband to the baroness TALBOIS, enjoyed not the title in her right.

It was answered, that more examples even in that house of Lisle might be gather'd to the contrary, than those two noted by Garter, for in K. H. 5's time sir WARREN GERARD was lord Lisle, by ISSABEL his wife, daughter and heir to JOHN lord LISLE. JOHN TALBOT likewise was lord Lisle in the right of his wife, and EDWARD GREY by marriage of ELIZABETH, daughter and heir of the said JOHN TALBOT, and his said wife was lord Lisle.

EDWARD GREY, viscount Lisle, by ELIZABETH his wife, daughter and heir to JOHN TALBOT, viscount Lisle, second son to the earl of Shrewsbury, who in the right of his mother was viscount Lisle.

JOHN GREY, viscount Lisle.	ANNE wife to JOHN WILLOUGHBY.	MARGARET married to the earl of Wiltshire.	ELIZABETH wife to EDMUND DUDLEY, father to JOHN duke of Northumberland.
ELIZABETH viscountess Lisle, affied to CHARLES BRANDON, but married to HENRY earl of Devon, and died without issue.			

Sir CHARLES BRANDON, afterward duke of Suffolk, being but affyed to ELIZABETH viscountess Lisle, used the dignity; but if you know not how, I will confess, by the king's letters patents, for she being of too tender age for marriage, and the king having appointed him to pass the seas, as his lieutenant, at that time into the Low Countries, for his honour and countenance, in consideration he was to receive it upon marriage, and not yet solemnised in her right, thought it no prejudice to grant him the name; for by the words of the patent it's not granted to CHARLES and his heirs, but reserved to the heirs by her, and she before and after still retaining her name of viscountess Lisle. Therefore CHARLES having shortly after happened on a farret morsel, yeilded up the letters patents to be cancelled.

[illegible] was created viscount Lisle: for this is a principle, that dignity [illegible] duke, earl, baron, and such like, is not [illegible] for although to determinat civil wifs, ambitious and [illegible] have fastened two heads; yet that state could [illegible] monstrous in nature, as a calfe with two heads. There [illegible] Lisle descended to sisters, was in law entitled, and at the [illegible] as by the pedigree may appear, and the title was granted on [illegible] heirs male of ELIZABETH his body, which Sr. JOHN DUDLEY was [illegible] by accident creation. But soundly to confess the truth, examples [illegible] so, for viscounts (because they be of later stamp, and have their [illegible] by patent and an annuity) as for barons, which is the cause that the [illegible]

For Mr. WYATTES his case, king HENRY VIII. caused to come before him, the two chief [illegible] Dr. GARDINER, which was bishop of Winchester, and [illegible] Garter, whose name was otherwise called BARLOW. First, the king demanded of the two chief [illegible] whether by law Mr. WYATTES ought to have the name of lord Bergavenny in the right of his wife or not. They answered, that the common law [illegible] little with the titles, and customs of chivalry. But such questions [illegible] always been decided before the constables and marshals of England. Then the king moved the question to Dr. GARDINER, who answered, that by the law which he professeth, dignity was denied both to women and heirs, [illegible] that law, quoth the king, that parteth christian women and Jewes in one predicament. That law, saith Dr. GARDINER, as I take it, is no [illegible] of dignity, whereunto publick office is annexed, for in France, women succeed as well to their ancestors in dignities, as patrimonies. Therefore the customs of every region is to rule those things. Then the king asked Garter of the realme of England. Who answered, that it hath been always used so in England, as in France, that the husband of a baroness by birth should use the stile of her barony so long as she liveth, and if he be tenant by courtesy, then that he might use it for term of his life.

The chief justice confesseth, that custom concerning the tenant by courtesy, to be contrary to the common law, for the common law admitteth him to all his wives inheritances of which she was seised during the coverture, and that might descend to their issue, and the dignity is a parcel of the inheritance, which Dr. GARDINER confessed, adding that the law granting the more, which is the possession of the barony, cannot be intended to deny the less, which is the dignity a thing incident to it.

As it standeth with law, saith the King, that tenants by courtesy should have the dignity, so it standeth with reason, but I like not that a man, should be this day a lord, and to morrow none without crime committed, and it must so fall out in the husband of a baroness, if she die having never had by him any children.

The chief justice confessed, that in that point the common law dissented not much from the King's reason, for the husband that never had issue is thought to have no interest in law in his wives inheritance, more then in respect only that he is a husband, but having a child then he hath acquired a state in law, and is admitted to do homage, and not before.

Then the King moved this question, If the crown of England should descend to his daughter, whether her husband should use the stile of England? The chief justices answered, not by right but by grace, because the crown of England is out of the law of courtesy, but if it were subject thereto, then it were clear.

The King for resolution said, That forasmuch as by their speeches he understood that there was no force of reason nor law to give the name to him that had no issue by his wife, that neither Mr. WYATTES, nor none other from thence forth should use the stile of his wives dignity, but such as by courtesy of England hath also right to her possessions for terme of his life. The which opinion the persons aforenamed applauded, and so the sentence stood.

The

The commiſſioners at that time ſeemed reſolved of the queſtion, and expreſſed nothing to the contrary, but only ſaid that they would report that which they had heard to her Majeſty, ſaving that the earl of Suſſex ſaid, that he thought the ſaid RICHARD BERTYE might uſe the ſtile during the lives of his wife and child, being heir to that barony, but not being deſcended of a collateral heir. Whereunto it was anſwered, that the collateral heir ſhould ſuſtain no more wrong in not enjoying the title, then in not enjoying the barony, which the law yieldeth to the tenant in courteſy. The place appointed for attendance to the ſaid RICHARD BERTYE was Theobalds, the lord treaſurer's houſe, for at that time her Majeſty was entring into her progreſs, but the time there ſerved not. Then the ſaid RICHARD BERTYE was referred to Kenelworth-caſtle, and there at the day of her Majeſty's remove, the ſaid RICHARD ſtanding by the ſaid commiſſioners dealt with her Majeſty, who ſeeing him ſpake in Latin, BERTYE, *nunc tua res agitur*, and when they had done ſaid to him more at her departure moſt graciouſly. She was now toward her journy, and when ſhe came to her ſtanding-houſe after her progreſs, ſhe would reſolve.

RICHARD BERTYE having proceeded ſo far as he meant, held himſelf ſatisfied, for the cauſe why he deſired hearing of his right and intereſt, was eſpecially to deliver her Majeſty from error, that ſhe by wrong information had conceived, that there was no ſuch right, and partly to conſerve the right to his ſon, and to averr the claim though he uſed not the ſtile of dignity. Therefore he hath not any farther ſolicited her Majeſty in that behalf, ſo this is the ſum of the diſcourſe before the commiſſioners.

But foraſmuch as there is a certain ſcrol, reporting a contention 'twixt RICHARD lord Latymer and ROBERT lord Brooke for the ſtile of lord Latymer: the better to ſatisfie all men in this caſe, I will anſwer ſo many articles in the cauſe as are not already anſwered in this diſcourſe before written.

Arguments and reaſons alleaged by the lord Latymer's councellor.

1st Argument. FIRST he affirmeth, that the title and inheritance given to the perſon by writ called, is meant to be an able perſon to ſit in the noble court of parliament, a place unfit for women, and therefore ſuch inheritance is determined, when it falleth to the heir female.

Anſwer. This queſtion is before reſolved, wherefore by way of recapitulation in this manner. The material cauſe, of a title of a baron by the antient cuſtoms and conſtitutions of the realm, is the poſſeſſion aſſeſſed ſufficient for ſuch capacity, as before hath been ſaid, for wiſdom in a poor man hath no maſter. The efficient cauſe is the King's writ or letters patents. In the writ we reguard the cuſtom. In the letters patents the words. Therefore if the barony deſcend to the woman, the ſervice thereof is required of her husband, as by the law ſo appointed, and no neceſſity of her preſence in the parliament. And ſeeing the cuſtom in this caſe and the like, hath ever ruled it ſo, no reaſon that this ſuppoſition ſhould over-rule it, for if his ſurmiſe were true, the dignity of the lord WELLES and WILLOUGHBY had deſcended to the younger brother of WELLES, and not to the elder brother's daughter, and that argument is in the book before largely diſcourſed of. By the way you may note here diverſity of opinions, and neither true, here he holdeth, by writ an inheritance paſſeth to the heir male, and another imagineth, a writ giveth no inheritance untill the ſon be called.

2d Argument. If lands and poſſeſſions be given to a man, and his heirs males of his body coming, and he hath heirs female, and no heir male, and ſhe hath iſſue a ſon, the ſon ſhall not inherit, becauſe he cannot derive himſelf from the male, but by the woman.

Although at this day the law be taken as this councellor ſaith, yet ſome very learned in our laws, have been of contrary opinion. And ſo are civilians who claim intereſt in theſe kind of controverſies, and by this man's confeſſion you ſee, that it repugneth not to reaſon, but that lands entailed unto heirs male, may deſcend to the iſſue male of an heir general, if form of law in conveighing the deſcent would permit. Then if the common law which accuſtomed to take place in this behalf contrary to the cuſtom of other regions, why ſhould not cuſtom in chivalry be of like force, eſpecialy when the common law taketh no notice of thoſe queſtions? It is enough that by cuſtome beyond the memory of man, a creation by writ hath entended to worke a ſtate of inheritance in law in new barons and baronies, as in the antient times was accuſtomed, and the ſame a fee ſimple. For fee tail as I have ſaid is not an inheritance, by deviſe of the law, but of particular perſons, and therefore there muſt be words of entail in the writ, to turn and alter the common courſe or elſe it abideth firm. And I have heard that in the creation of HENRY BROMFLETT lord Veſcy, it was ſo done in the writ. Anſwer:

If dignity of a baroneſs be in the wife as inheritance, then the ſame inheritance muſt be deemed in the husband in the right of his wife, and in every ſuit for the ſame inheritance his wife muſt be named with him in the writ or demand, and if the king would call ſuch a husband into the parliament in his wife's right, then muſt the wife be alſo named in the writ, and there is no ſuch preſident. 3d Argument.

The firſt part of this argument is very true, but if he mean that in actions the husband ought to be named a baron or elſe the writ ſhall abate, then he is deceived, for a baron may be ſued in the title of chevalier, becauſe he is not otherwiſe named in the writ: Yet I have read of a writ granted to a baron, to drive the plaintiff to ſue him by his title of dignity: Alſo one piece is true, that there is no preſident of any writ calling the husband to parliament that nameth alſo his wife, yet his concluſion's falſe. But if he would allow our caſe, (if there were a preſident where the wife was named) ſurely he muſt needs allow likewiſe that a man may be called to parliament for his wife's barony, and ſhe not named in the writ, becauſe there are infinite preſidents for it; beſides he groundeth his argument, that upon ſuites for the ſame inheritance, both the huſband and the wife muſt be comprehended in the writ; ſummons to the parliament all men know is not for ſuch cauſe. Anſwer.

If a baron be created by writ though not by words compriſed in the writ, yet by old uſage it is to be underſtood, that the enheritance is only given to him, and his iſſue male, to whom the writ is directed. And if land be given to a man and a woman *in liberum maritagium*. Theſe words *liberum maritagium* are words comprehending inheritance, and when ſuch perſon ſo called ſhall ſit in parliament, if there hath been any old barony before determined by attainder or default of iſſue, ſhe ſhall take the place. As in EDWARD the IVth's time order was taken 'twixt RICHARD FINES, knt. the lord Dacre, and HUMPHREY DACRE, knt. which RICHARD was created by the king lord Dacre, when the barony was in the king's hands by attainder, and becauſe the place was void, he ſucceeded in the former place. 4th Argument.

None doubteth but the king may give to his creature, preheminence of place, yet your conjecture is falſe. This queſtion is beſt decided by daily experience, which teacheth the contrary. Furthermore the lord Latymer's councellor confeſſeth that by the writ implicatively, there paſſeth inheritance to the party, to whom it is directed: Then I infer as I intended before, that the ſame muſt be fee ſimple: Unleſs wordes and old uſage with acceptation inforce the contrary. But the old uſage, and acceptation is all on my ſide, and the words alſo after the interpretation of the common law in this caſe, as cogniſance of right in a fine, is intended fee ſimple; I like his argument in this manner very well, viz. as *liberum maritagium* are not words of inheritance properly, nevertheleſs by approved cuſtom they are received to employ inheritance. In like manner ſay I, by old uſage, and laudable cuſtom, the dignity Anſwer.

of baron paſſeth to the heirs of him called in his own right, although the writ have no words of inheritance, but otherwiſe there is ſmall reſemblance 'twixt a gift in frank marriage, and a creation by writ. For in gift of frank marriage, there muſt be kyndred 'twixt the donor and the woman donée, and it is frank from all ſervice untill the fourth degree, except fealty: but in the other caſe ſervice is immediately due upon the creation, and no degrees of kindred 'twixt the donor and donée requiſite; and there is another thing to be conſidered how before the ſtature *de donis cond.* frank marriage by the common law was fee ſimple conditionall, ſo that the donée after child had by his wife, had power to alienate the land, which example may ſerve to give greater intereſt to tenant by courteſy to bear his wife's ſtile then otherwiſe.

5th Argument. For further proof the ſaid councellor noteth examples, as the lord CROMWELL had two daughters his heirs, the elder married to the lord WILLOUGHBY, and the younger to ſir HUMPHRY BOWCHIER, and becauſe the dignity ended for default of heirs males, the king created ſir HUMPHRY BOWCHIER lord Cromwell; alſo the lord BERKELEY was created and the heirs general put by: Alſo ſir RALPH NEVILL, ſecond ſon to RALPH earl of Weſtmorland married the heir of baron Duſeley, nevertheleſs he was never created nor reputed a baron in parliament. Alſo he ſaith that many barons deceaſed have left heirs general females, and ſome barons daughters have had iſſue male, yet neither the one nor the other have ſucceeded in dignity, but the ſucceſſors created as in the houſe of Beauchamp, Berkeley, Liſle, and as at this day ſaith he, none of the heirs to the barony of Clynton, is baron Clynton.

Anſwer. The ignorance of this councellor in the principles of chivalry, which I before recited for creation of ARTHUR PLANTAGENET, cauſed him to produce theſe examples to no purpoſe, not underſtanding that the title of the barony of Cromwell and Berkeley was extinct, deſcending to more then one daughter and heir, and whoſo liſteth to ſeek out the deſcent from ROBERT FERRERS baron Duſeley unto RALPH NEVIL's wife he will ſatiſfie himſelf. For the barony of Clynton I have heard the earl of Lincoln ſay he knoweth not, neither hath to ſhew of the beginning, it is of ſo antient continuance; therefore not of ſo late creation as this counſellor imagineth. But be it that RALPH NEVILL had married the ſole heir of the lord Duſeley, whereby by the general cuſtom of the realm, he might have uſed the name and would not, there is no reaſon why his abſtinence ſhould be a concluſion to others, having in all ages plenty of preſidents for them, and the law giveth in ſuch digreſſion from cuſtom this ſentence, *Si quid contra conſuetudinem fiat ad ſolitum ſuum revocare debet præſes provinciæ.* Or what if the prince by wrong information prohibiteth the husband of a baroneſs to uſe the ſtile, and he to ſatisfy the prince obeyeth, yet right remaineth right. As king HENRY the VIIIth, wrong incenſed againſt ſir HENRY GREY, would not permitt him to uſe the title of earl of Kent: ELIZABETH our queen his daughter, well inſtructed of the right, ſuffer'd REGINALD his nephew to take it upon him. As princes acts though they be *præter legem* are tolerable, ſo if they be *contra legem* be they not a derogation or extinguiſhment of law, but a letting the effect. Now I will report the contrary reaſons and arguments which the lord Brookes councellor propounded againſt the lord Latymer.

He ſayeth that the lord RICHARD LATYMER's allegations of Berkeley, Beauchamp, and Liſle, not proved, cannot countervail againſt a moſt antient cuſtom to the contrary, namely that the ſtile and name of baron deſcendeth, to the heirs general, as the common law directeth all inheritances, unleſs words in the creation expreſſed plainly entail it. As for example, the marquis Dorſett was lord Ferrers of Groby by his grandmother ELISABETH, lord Harrington and Bonvile in the right of the lady CECILY his wife then living, and in the living knowledge of all the world. And the earl of Arundel, lord Matravers by the woman, and the earl of Northumberland, lord Poynings by the like right: and NEVILL lord of Abergavenny in the right of ELIZABETH his grandmother.

And

And ſo lord BERNERS, lord ST. AMAND, lord DUDLEY, lord DE LA WARR, lord FERRERS of Chartley, lord FITZWARREN, lord DACRES of the South, and lord POWIS, all barons by their wives. And as touching the lord BEAUCHAMP, he was by new creation made lord of Powycke.

Againſt this argument and examples, when they could not be avoided nor diſproved, for a poor ſhift the councellor for the lord LATYMER, replied, that albeit the earl of Arundel and the others before mentioned uſed thoſe ſtiles, yet that made them not barons. A true ſaying yet to ſmall purpoſe, for they uſed thoſe ſtiles not to make themſelves barons, but becauſe the law of the realm by the women ſo abled and warranted them; and as for their honour ſake they would not unlawfully uſurp them, ſo neither would kings without juſt cauſe in all ages have tolerated it.

After in this manner, one had heard what the other could alledge, they proceeded no farther judicially, but fell to order among themſelves. And a man would marvell how NEVIL having alledged and proved nothing material for himſelf, neither diſproving the allegations of the lord Brooke, and being ſo far removed in blood from him from whom he claimed, ſhould notwithſtanding go away with the dignity, but he had better right than his councellor could eſpy, as you ſhall underſtand hereafter; and firſt I will declare the pedigree on both ſides.

WILLIAM LATYMER created baron of Danby by writt, anno 27 EDWARD I.

WILLIAM lord LATYMER after his father.

WILLIAM lord LATTYMER after his father.

JOHN NEVIL lord of Raby and of Middleham. 1 — ELIZABETH heir to her father. 2 — ROBERT lord WILLOUGHBY of Eresby. — MARGARET 1 Wife.

JOHN NEVIL lord Latymer of Danby dyed ſ. p. — MARGARET living at her brother's death, dyed ſ. p. — ELIZABETH living at her brother's death. — THOMAS WILLOUGHBY. — WILLIAM lord WILLOUGHBY.

JOHN WILLOUGHBY.

JOHN WILLOUGHBY.

ROBERT lord Brooke claiming the ſtile of lord Latymer.

ELIZABETH daughter and heir of WILLIAM lord LATYMER of Danby. 2 — JOHN NEVILL lord of Raby. 1 — MAUD daughter of HENRY lord PERCY the eldeſt.

JOAN daughter of JOHN duke of Lancaſter. 2 — RALPH I. earl of Weſtmorland. 1 — MARGARET daughter of HUGH E. of Stafford.

GEORGE NEVIL created lord Latymer by writt of HENRY VI. — JOHN lord NEVILL of whom the earl of Weſtmorland.

HENRY ſlain during his father's life.

RICHARD NEVIL now claiming the ſtile of lord Latymer.

To end this contention the lord Brooke was informed by a herald that ſir GEORGE NEVILL grandfather to RICHARD was created lord Latymer by a new title, and therefore lineally deſcended by RICHARD, ſon of HENRY, ſon of the ſaid GEORGE; and that the lord Brooke had made a wrong claim, which ſhould have claimed his ſtile from WILLIAM LATYMER firſt created earl of Danby, the head manour of the barony, which was alſo deſcended to RICHARD lord Latymer.

The lord Brooke perceiving his error was contented to renounce his claim to that ſtile, having one of his own, ſo that he might make ſome gain of it: ſo they concluded a marriage betwixt their children, whereupon RICHARD lord Latymer ſuffered a recovery of the manours of Scampton, Thornton in Pickering, Lith, Sinelington and Birdall, parcel of the inheritance of the lord Latymer, demanded by the lord Brooke, with which concluſion both parties departed well pleaſed. But it being true that the lord JOHN Latymer's two ſiſters were both living at his death, the lord Brooke had no colour of title: Yet one thing reſteth

to

to be anſwered, the lord Latymer affirmed that ELIZABETH wife to JOHN NEVILL, and after married to ROBERT WILLOUGHBY, never uſed the ſtile of lady Latymer, nor ROBERT WILLOUGHBY in her right, yet he ſaith that ROBERT was not lord Willoughby while ſhe lived.

She being wife and widow of lord NEVIL might be called by the name of lady NEVIL as the higher dignity, and after ſhe was married to ROBERT WILLOUGHBY (who in her time was lord Willoughby, for he was lord Willoughby in the life of MARGARET his firſt wife, before he was married to this ELIZABETH lady Latymer) ſhe was called lady Willoughby.

But concerning the former claim made by RICHARD BARTY to the ſtile of lord Willoughby of Willoughby and Eresby in the right of the DUTCHESS his wife (albeit the rule ſhould fail in all families and baronies) yet foraſmuch as time out of man's memory it may be proved againſt the whole world, that the dignity in that houſe hath deſcended to the heir general, and that the husband of ſuch heir hath uſed the name in his wife's right; ſuch title by way of preſcription is in this caſe ſo ſtrong, as none learned will deny it. If any doubt of it, let him read CASSANES and TIRAQUELL. And for the barony of Eresby it is plain, that the dignity is annexed to the manor of Eresby, after the manner of ancient baronies, and after the manner of Arundel caſtle. And that the ſame manor hath more knights fees thereunto belonging (than is requiſite for a barony) may appear in accompts and old inquiſitions, in which divers manors, as members of the ſame chief head of the barony, are named and rehearſed. Which came unto WALTER BEKE by the right of AGNES his wife, daughter and heir to lord HUGH DAPIFER: Alſo long after, another WALTER BEKE deſcended of the former WALTER, having three daughters and no ſons, and matching one with ROBERT WILLOUGHBY (not that ROBERT which matched with ELIZABETH lady Latymer, but his anceſtor) conveyed in his life time the manor and barony to the ſaid ROBERT by ſpecial conveyance, to come preſently and immediately to him after the death of the ſame WALTER, whereby the ſame ROBERT was lord of Eresby, and the tenure of the head manor of the barony, that is to ſay of Eresby, proveth, that the dignity is annexed thereunto. For the ſervice of DAPIFER, by words in antient charters and offices, is expreſſly appointed to be done, by the baron of Eresby himſelf, untill by compoſition it was agreed and permitted, that it might be executed either by his ſon and heir apparent, or by another depury, at the leaſt in degree a knight, ſo that the gift of the barony was granted in the conqueſt-time, upon the honour of the ſervice to be done by the perſon of a baron, to have continuance for ever.

Laſtly I will beſtow ſome travell to waſh away a ſcruple (which hath not in itſelf a ſcruple of ſubſtance) out of a paſſage in one of the books of controverſy at the common law, whereof one MARTEN, 4 HENRY VIII. ſeemeth author. Who by way of argumentation more then opinion uſed this ſpeech. That a woman taking a husband loſeth all the names ſhe had before, which ſpeech, if according to the words it be generally underſtood, is notoriouſly falſe. Students therefore need judgment in their reading, to diſcern of ſpeeches ſpoken at random, from thoſe grounds indeed upon the laws of the realm. They for the moſt part read thoſe books as ſacred volumes, with ſuch reverence, (wherein yet they deſerve ſome commendation) that whatſoever they find written though it fight never ſo much with reaſon and law, they rather doubt of reaſon and law then thereof, and ſuppoſe it a myſtery. Which zeal of antiquity likewiſe in the church of God, have been the greateſt mother of error. But this ſcruple, though it be of great age, yet came never to confirmation, and therefore I ſhall have the leſs to do with it.

To try out the truth we muſt examine it by the general rule or maxim of the law, which is, that every woman taking a husband loſeth the proper name of

of the family wherein ſhe is born, for by that act ſhe incorporateth herſelf into her husband's houſe, but not her other names. Common cuſtom and knowledge defendeth this rule, for every married woman retaineth her name of baptiſm, and alſo with us and other regions, her name of dignity, unleſs a greater happen to her, then the greater is preferred, and the leſſer ſuppreſſed, but not extinguiſhed.

Of this latter part ariſeth the ſcruple (whereof I ſpeak) contrary to reaſon, law, common cuſtom, and obſervation, which is the only rule to over-rule the caſe; but it reſteth only about certain forms in the prince's courtes at the common law, to be uſed or not uſed in divers kinds of writs. By CHAUNC. in the book before rehearſed, an exigent may be awarded againſt a counteſs but not againſt an earl. He giveth this reaſon, becauſe an earl is to be ſuppoſed without land. FULLESCH addeth and ſayeth, not for the cauſe only, but alſo for the dignity of his name. NEWTON is flat contrary, affirming that an exigent ought no more to be awarded againſt a counteſs, than againſt an earl. And in this combat he may beat CHAUNC. and FULLESCH with their own weapons. For if the cauſe by him alledged be the right cauſe, it muſt work the ſame effect in the counteſs as in the earl. For if we muſt imagine that an earl cannot be without land, the law compelleth us to imagine the like of his widow, to whom the law giveth a third part, and her name is alſo a name of dignity; yea, and there is another reaſon that doth more ſtronger urge it for the counteſs; for the law which in all other caſes tendereth the widow eſtate, is not to be drawn to deny them this priviledge with their husbands given alſo by the civil law: *Uxor gaudet viri privilegiis:* Here you ſee is opinion for opinion, reaſon for reaſon, and one more for the widow's advantage.

CHAUNC. ſhould have ſhot nearer the pricke in my opinion, if he ſaid the earl priviledged becauſe he is a lord of the parliament, for ſome doubt whether an earl (only in reſpect that he is a duke's ſon) may claim that benefit. But to doubt whether the wife may uſe the name of dignity received from her huſband, is to doubt of the equity of the law ſurmiſed againſt her. For the ſame law that bereaveth her of all her own names which ſhe had of her own houſe, ought to endow her with all her husband's. And ſeeing every noble woman is named abroad by the name of her husband's dignity (other than ſuch as are annexed to office of adminiſtration) what deformity bringeth the name of counteſs to the writ. BABINGTON, better reſolved in that point then CHAUNC. clearly pronounceth, that it skilleth not greatly whether it be in or out. He ſpake it to ROLFE that would have had the writ abate, either becauſe lord LOVELL was named but knight, or elſe becauſe in the ſame writ M. B. was named lady Abergavenny. But he would not have it the writ ſhould abate for either reſpect, neither did it. For if names of dignities are extinct in women, then conveyances and fines paſſed by their names ſhould be utterly void. But ſo they are not. But if we look profoundly into thoſe books we ſhall find nothing ſet down in the whole courſe of them with an intention to determine of the right names of nobility, but only to the uſe of them: and to avoid confuſion of names in writs and pleas, which require every thing certain without knot or ambiguity, for in ſome caſes they allow and require both men and womens names of dignity to be expreſſed, and in ſome they ſuffer them to be omitted. And it is common that a councellor for his fee affirmeth one thing at one time, and the contrary at another time, in one kind of queſtion entertained by one client *pro*, and by another *contra*. As for example, ROLFE in the writ brought againſt the lord LOVELL and M. B. lady Burgavenny urgeth that if the writ ſhould not abate becauſe LOVELL was not named lord, that it ſhould abate nevertheleſs becauſe M. B. was named lady; the ſame ROLFE, 2. HEN. VI. in a writ of waſte brought againſt BEATRIX (by theſe words) which was the wife of the late earl of Arundel, demandeth judgment againſt the writ, for that ſhe was not named counteſs; for that BEATRIX both at the time of the purchaſe of the writ, and at that inſtant, was counteſs of Arundel. It was anſwered him by the court, that thoſe

wordes in the writ, did not determine or take away her name of dignity (which I pray you note) as if it were ſaid *qui fuit dux*. But declare a determination of the marriage between the late earl and her: This ſpeech proveth that women may uſe names of dignities, and that they are not loſt by non-uſe in courts, and that by ROLFE's ſounder opinion in ſome caſes omitted, the writ ſhall abate, as is concluded by the book 12 EDW. III. where the earl of Eſſex bringeth a writ of waſte againſt ALICE, which was the wife of the late earl of Eſſex: HILL prayeth judgment againſt the writ, becauſe ſhe is named counteſs: TREW anſwereth, that although in the writ ſhe be not expreſſed counteſs, yet ſhe is intended counteſs, but if ſhe would bring a writ of dower, or *cui in vita*, ſhe ſhall not name herſelf counteſs. But in a writ of aſſize HILL affirmeth ſhe muſt be named counteſs. And TREW alloweth that to be true; and further it is declared if a writ were brought againſt her as tenant for term of life, ſhe ſhall be named counteſs, but when it is brought againſt her as tenant in dower, then ſhe muſt be deſcribed by her late husband's name.

Likewiſe where by common opinion, if the name of earl be omitted, the writ abateth, yet WILLIAM CLYNTON earl of Huntingdon and ALICE his wife ſued a writ of nuſance 13. EDW. III. and was not named earl, but becauſe the writ was ſued in the right of his wife, it was judged not to abate. So that every man may diſcern that the court laboureth only to conſerve forme of proceeding, and not to determine of the meer right of thoſe dignities.

Juſtice BROOKE in his abridgement reciteth an opinion of a mad judge in an uneven time, and in the heat of indignation againſt one Mr. STOKES borrowed from the Roman laws, *quod mulier nobilis nubens viro ignobili deſinit eſſe nobilis*. And therefore enforceth that a dutcheſs or counteſs marrying an eſquire or gentleman loſeth her name and dignity. But MORGAN greatly deceived himſelf, ſuppoſing the words *nobilis* and *ignobilis* in that place to have the ſame ſignifications as our Engliſh words noble and not noble hath by common underſtanding. For it is otherwiſe, for by them are meant gentleman or gentlewoman, or no gentleman or no gentlewoman, ſo that the law is like to all gentlewomen marrying with no gentlemen. But BROOKE immediatly in the ſame place noteth a book that in our law it is clear, that ſhe loſeth no dignity. Now for anſwer to this Roman law and mad judge, I will put you in remembrance of two old verſes:

Cum fueris Romæ Romano vivito more:
Cum fueris alibi vivito more loci.

Which in effect teach that men living in Rome are ſubject to the Romiſh cuſtoms and in England to the Engliſh.

In Rome at that time all dignities were derived, as before hath been touched, from offices, and the offices of dignity were diſtributed among ſenators and patricians. The husband's dignity was communicable to the wife, and from the father deſcended to the ſon and nephew, and no farther than *uſque ad pronepotem*. The daughter of a ſenator marrying with a commoner loſt her nobility and gentry untill the commoners obtained that out of the body of them ſenators might be choſen. Then if ſhe married with ſuch a one as by his quality might be choſen a ſenator, ſhe had favour; yea, and once the commoners obtained a publick ordinance and act that a ſenator having two daughters ſhould give the one in marriage to a commoner. And a gentlewoman's degree in that manner loſt by ſome opinion was never recoverable; but by ſounder and more received, if the gentlewoman ſo matching herſelf, upon admonition utterly relinquiſhed her husband, (for in this caſe divorce was admitted) or after his death married with a gentleman, then ſhe received her former ſtate; yea, and ſenators themſelves were by law reſtrained from certain inferior marriages.

But after chriſtian religion entered into Rome, which pronounceth marriage in the Lord, without other exception, to be honourable to all perſons, the former

law

law and liberty of divorce fainted and languiſhed away; for after the haughty Roman hearts had humbled themſelves to receive a carpenter's Son, no gentleman, for their God and Saviour, they ſought his children for ſons in-law before the ſons of kings. And if Roman laws in matter of nobility reach to us, there is another Roman conſtitution which perfectly agreeth alſo with our religion, that is with more ſeverity to be retained, which giveth ſentence that every noble or gentlewoman ſtained with unchaſtity ſhall utterly loſe her nobility. And this carrieth great reaſon, for the forfeiture is for a moſt filthy and ignoble fault; when the other is not only for no fault, but for an honourable action. There are alſo many forfaitures in thoſe laws expreſſed for noble and gentlemen, which if they ſhould be obtruded to our nobility, perhaps they would anſwer (and that not unreaſonably as they once did) *nolumus legem Angliæ mutari.*

Furthermore in thoſe days in the Roman commonwealth, the dignity of a dutcheſs, marchioneſs, counteſs, baroneſs, were not yet out of the ſhell (as already hath been declared) and which are of another nature then thoſe Roman dignities, for they are feodall dignities, and in the firſt creation not tied to the perſon, but to the fee, that is to the dukedom, marchionate, county, or barony. So that unleſs the fee were forfeited, there could be no forfeiture of the name. Therefore later doctors uſe certain exceptions, and by collection of textes inferr, as namely, *Rom. quod nobilis fœmina nubens ignobili non amittit nobilitatem.* That a noble woman marrying with an ignoble man loſeth not her nobility.

CHOPPING and TIRAQUELLUS are reſolute that the rule of *nobilis nubens ignobili* taketh no place in a queen or dutcheſs. And TIRAQUELL alledgeth BALE in C *ſignificavit*, and addeth that the husband is by marriage with a queen ennobled and ſhineth with his wives beams. *L. 1. C. de præp.* For as no gentleman called to ſerve a king *a latere*, that is in neareſt place of ſervice, is thereby made a gentleman without farther ceremony: So in this caſe, *Quia nulla major eſt lateralitas quam viri & uxoris.* Of this mind are DECIUS, ALCIAT, FRANC. *purp.*

More he hath theſe words, *Nec ſolum id procedit in regno, ſed etiam in ducatu, comitatu, & ſimilibus ex quibus quis nobilis efficitur. Nam tunc non ſolum non amittit uxor nobilitatem ſi nubat plebeio ſed & ipſius vir nobilis efficitur. Addit* HOSTIENSES: *Quandocunque de facto & conſuetudine maritus radiis uxoris coruſcat ut cum ſimplex miles duxit comitiſſam.* That exception not only taketh place in a Queen's husband in reſpect of a kingdom, but in counteſſes and dutcheſſes in reſpect of earldoms and dukedoms, and ſuch like poſſeſſions as ennoble the poſſeſſors: HOSTIENSES addeth, that ſometimes indeed and by cuſtom the husband ſhineth with the wives beams, as when a ſimple ſoldier or knight hath married a counteſs. In Germany cuſtom prevaileth that all the ſons of a duke, bear the names of dukes, and all his daughters of dutcheſſes; and ſo it is of earls ſons and daughters, they have the ſame name of dignity as earls and counteſſes, and yet females with them ſucceed not in feodales. Of the marriages of ſuch ladies thus writeth JAC. REBUFF not diſſonant from that before recited. *Si filia ducis nubat militi ſimplici dicetur ducciſſa quia eſt dignitas generis filiæ ducis, & dignitas veniens a patre eſt excellentior ea qua venit a marito. Si tamen dignitas mariti, ſit major uti poterit nobilitate viri.* Our cuſtoms agree with the Germans in ſome things, but with the French in moſt. Now weigh this, if the Germans and French born in obedience to the Imperial laws, yet in orders of chivalry and nobility are not tied to them but to their own cuſtoms; who can juſtly wrangle with us (unleſs it be MORGAN beſides his wits) if we being out of the homage and ſubjection to thoſe conſtitutions follow likewiſe our own cuſtoms of chivalry, little or nothing ſwerving (our cuſtoms conſidered) from our neighbours?

With us dukes ſons are not dukes, the eldeſt only ſucceedeth in dignity, and his father living beareth the name of an earl, and in degree above all ſimple earls, the younger ſons are lords and in degree above all barons, the daughters

are all ladies, in degree above all counteſſes, holding their name of dignity and place after they marry (if they take to husband a knight, eſquire, or gentleman.) But if they marry a nobleman they follow his degree, and loſe their own, wherein we digreſs not much from REBUFF's words before recited. Likewiſe the eldeſt ſon of an earl only ſucceedeth in his father's dignity, being in his father's life a lord, in degree above all barons, and his daughters ladies. Thoſe are not midſummer lords and ladies, or as it pleaſeth ſome profeſſor of the common law to term them, lords and ladies by courteſy and not by law. But they are lords and ladies indeed, by the cuſtoms of chivalry time out of man's memory, as ſtrong in their kind of operation, and in their proper court, as any general cuſtom at the common law: Lords I ſay by that ancient law, albeit the common law taketh notice of none other lords, then lords of parliament, nay ſcantly doth it take knowledge of all them as before I told you of barons. And therefore an argument drawn from the form of the common place ought not to be a concluſion to nobility. As for example, at the common law a baron is not known by the name of a baron, but by the name of chevalier, yet thereupon to conclude that a baron is no lord, but an inferior degree to a knight, becauſe knight is a name of dignity and baron not, is an argument as falſe as God is true. And if any be deſirous to learn upon what occaſion the error firſt crept in, that knighthood was received for a title of dignity, and that of a baron for none, he may be ſatisfied beholding the ſame and other like faults, committed by divers profeſſors of our laws, as may appear in the books of years borrowing divers ſpeeches word by word out of the civil law, not thoroughly by them conceived, nor underſtood; ſome civilians writing of fees put dukedoms, marquiſates and earldoms to be dignities, meaning perſonal dignities, as incident to offices, for ſo were they before they became fees of inheritance; but baronies were from the beginning fees, or rather free ſeigniories, and ſo real and not perſonall dignities of offices. Therefore when it is ſaid that baron is not a title of dignity, then civilians mean not of perſonal dignity in reſpect of office, unleſs you mean ſuch as are barons of the exchequer: But otherwiſe that ever they meant to make the ſtate of a baron inferior to a ſimple knight was fartheſt from their meaning, for they pronounce that baronies and earldoms may enroll their poſſeſſors and progeny with the dignity, and not ſo of knighthood.

It is familiar in common pleas, for conſervation of form, to vary in words from the ſimple truth, yea and in this caſe often to term ſome barons knights, which indeed are none; yea the two chief juſtices themſelves, having the title of lords, albeit not of parliament, no leſs incident and proper to their offices, then the donation of certain offices in both benches, yet in acts within the ſame courts ſolemnized, many times omit not only the ſtile of lord, but alſo of knighthood, as in the fines it is commonly ſaid *coram* JACOBUM DYER ſimply without addition, chevalier, *cum capitali juſticiario noſtro & non domino.* So you will object that the Prince writeth in the writ of ſummons. WILLOUGHBY DE PARHAM, chevalier, and not baron, but if you will conclude that therefore he is no lord, in anſwer *non valet argumentum:* yea, and in antient time noble men ſo little gloried in their ſtiles, that in their letters they were omitted, as, WILHELMUS DE ROMER *omnibus ad quos, &c. ſalutem, &c.* without his ſtile of earl, likewiſe ANTONINUS BEEKE without mention either of biſhop or patriarch, yet he was both.

Then it is farther to be conſidered, how by our laws, as 'tis often before recited, women may poſſeſs dukedoms, earldoms, baronies, and the ſtiles, of thoſe dignities in their own rights, which greatly altereth the caſe. And of ſuch inheritances by our laws, none are ſpoiled, but by the higheſt criminall offences. I am forced ſtill to iterate examples, when DE LA POLE was created earl of Suffolk, by the ſame patent his wife was created by name (a form not uſed) counteſs for term of her life, which name by ſecond marriage could not be taken away. Queen ANNE before marriage was by king HENRY VIII. created marchioneſs of

Pembroke, and the marquiſate, with the dignity granted to her iſſue male: I ſay no inferior match in marriage, might race out her name of dignity, nor any clauſe in the imperial laws barre her iſſue male to claim the ſame from her in England. The widdow of HENRY V. married with OWEN TEDDER, the counteſs of Somerſet married with DE LA POLE, the lady CECILY daughter to EDWARD IV. married with KYME, the lady PARRE queen dowager of HENRY VIII. married to ſir THOMAS SEYMOUR, and all retained and continued their ſtiles of dignities. Common conveyances, fines and records, are plentiful witneſſes of the like, neither is the regiſter void of ſuch preſidents, and this cuſtom is as old as England it ſelf: neither doth any thing written in the books of years, well conceived, jarr againſt it: For when they take from women their names of dignities, and from barons their names of lords, it is to be underſtood *quantum ad formam forenſem, & non aliter*: And that not in all caſes neither. There is therefore nothing left to impugne it, but wilfulneſs, malice, or ignorance, and to them (becauſe in their nature they be infamous) I take exception.

Now reſteth only one faint imagination to be anſwered; ſome without any rule or authority moving them thereunto, require degrees of proceeding in nobility, as in univerſities obſerved, being ignorant how ſome of obſcure parentage have leapt at the firſt ſtep into kingdoms and empires, and that GOD himſelf hath ſaid that he, *a ſterquilinio*, placed men of baſe degree in rank with princes. It were injury to vertue, and the prince's prerogative, if he might not directly place a worthy man, in a worthy vocation: He that winneth the garland by common conſent, is worthy to wear it; if the prince or law enable a man to poſſeſs an earldom, why ſhould any cavill at the ſtile, eſpecialy the law and cuſtom freely yielding it, and the examples not rare in England? As in the earldom of Arundel after the death of WILLIAM ALBINAEKE, and in the baronies of Bardolphe, and Moreley, and divers others of freſh memory: the ſame reaſon prevailing for the layman, which ſerveth for the eccleſiaſtical perſon, no gentleman otherwiſe then by virtue: yet by his biſhoprick immediately inveſted with the degree of a baron, and that the degree of knighthood ſhould be firſt requiſite, is a prepoſterous judgment, ſith that it is a dignity which may be added to a marquis or duke. And therefore more congruable (howſoever it hath been otherwiſe uſed) that ſome ſorts of men, before no gentlemen, may enjoy rather the dignity of a baron, then the martial dignity of knighthood. Touching the diſtinction of perſons, for the adornment and ſafe government of commonwealths, this rule hath been always obſerved, that the wiſer and more virtuous the perſon is, ſo much the apter he is, to be a magiſtrate. *Quia non genere ſecundum graviſſimos ſcriptores, ſed præſtantia rationis aliis animalibus ſuperiores ſumus*, ſo that where the mind is ignoble, the body cannot be noble: For as PLATO ſaith, *corpuſque humanum animi imperio functiones obit ſuas*. The concluſion therefore followeth, that to deny to wiſe and virtuous men capacity of a noble fee, or of a noble dignity lawfully purchaſed, or caſt upon him, is to deny law, cuſtom, reaſon, and nature.

RADULPHUS CROMWELL, mil. dominus Cromwell. — MATILDIS uxor RICHARDI STANHOPE, mil.

MATILDA domina Willoughby conſ. & una hæred. RADULPHI CROMWELL, milit. domini Cromwell, 39. HEN. VI.

In libro de abbathia de Alvingham rem penes m^m. M. ſubſequentes notæ ſunt excerptæ.

In cap. 2. Quod quidem JON, it. aliter nomine PINZON fratres ex ſacramento invicem ſuſcepto venerunt in Angliam a conqueſtore, & JON tenuit dominium de Tateſhall ex dono regis, & PINZON per regiam licentiam tenuit de ſancto CUTHBERTO de Dunelm. per ſervicium ſeneſcalciæ.

Cap. 2. RADULPHUS DE CROMWELL, miles, jure MATILDIS uxoris ſuæ, filiæ & hæredis ALICIÆ nuper uxoris WILHELMI BERNACKE, filiæ JOHANNÆ nuper uxoris SIMONIS DE DRIBY quæ fuit ſecunda filia ROBERTI DE TATESHALL. Quod HUGO filius EUDONIS & HUGO filius PINZONIS fuerunt fratres uterini, & HUGO filius EUDONIS fuit dominus de Tateſhall. HUGO filius PINZONIS dedit abbathia de Kirſted molend. ſuper Bayn. cum Lovehagh & piſcar. in Twythorn.

In eodem libro cap. 166. ſic dicitur.

ROBERTUS.

JOHANNES ROBERTUS.

WALTERUS.

WALTERUS.

ROBERTUS DE TATESHALL.

AGNES uxor WALTERI BECKE domini de Eresby.

| 1 NICHOLAUS. | 2 ANDREAS. | WALTERUS. | 3 HENRICUS.

Cap. 3.

HUGO DE ALBENIACO. 1. | DAWBENEY com. Arondell.

| 1 AMABILIS uxor ROBERTI TATESHALL. | 2 ISABELLA uxor JOHANNIS FITZALLEYN. | NICHOLAA 3 ROGERI SOMERII. | CECILIA 4 uxor ROGERI MONHAULT.

Cap. 4. JOHANNIS DE HAMBY tenuit in com. Lincoln. 4. feod. mil. de ROBERTO DE TATESHALL per partitionem, qua illud ſervicium aſſignatum ei fuit in diviſione hæreditatis HUGONIS comitis Arondell.

Cap. 35. P. 3. termino Michaelis anno 19°. EDW. III. quod maner. de Maltby fuit parcella purpartiæ JOHANNÆ DE DRIBY.

P. 3. quod anno 31. reg. EDW. fil. R. HEN. GILBERTUS DE GAUNT dedit omnia maneria ſua domino regi.

Et in altero libro prioratus de Alvingham ſic,

Dominus CONANUS comes Britan. & Richmond. dedit cuidam BRIANO DE BISTAN, mil. terr. in Ferbrig & Germethorp qui duo fratres participaverunt.

BRIANUS DE BISTAN. | GILBERTUS Germanus BRIANI.

| 1 RADULPHUS ob. ſine prole p^a. Ric. R. | 2 ALANUS. WALTERUS. ALANUS. | 2 THOMAS. | 3 WILHELMUS. GIKELLUS. | 1 THOMAS. RICHARDUS GIKELLUS duxit JOANNAM &c. quæ dedit domino de Britan. comiti Richmond. pro cuſtodia & maritag. PETRI filii ſui 40 marc. | 4 GILBERTUS.

ROBERTUS. ALANUS.

| 2 JOHANNES 1278. | 3 RADULPHUS. | 4 WILHELMUS. | 5 THOMAS. | 6 RICHARDUS. | 1 PETRUS GIKELL.

JOHANNA filia & hæres, cujus pater PETRUS reliquit filiæ ſuæ 6. partem totius hæreditatis ſuæ, & reliq. partiri inter fratres ſuos; nupta fuit illa JOHANNI fil. domini WALTERI BEKE.

WALTERUS BEC dedit ſanctimonialibus de Alvingham eccleſiam ſancti PETRI DE NEUTON, &c. venit cum Conqueſtore & habuit hæreditatem ſuam in Flandria; duxit AGNETEM fil. HUGONIS filii PINCEON.

| 1 HUGO filius & hæres in redeundo de terra ſancta deceſſit ſine hærede de corpore; tunc HENRICUS, WALTERUS, & JOHANNES diviſerunt hæredit. & ut dicitur in margine ejuſdem libri, HENRICUS tunc primogenitus non fuit multum ſapiens, THOMAS habuit oſſa quæ ſpectabant ad donum fratrum ſuorum.

| 2 HENRICUS BEC retinuit Eresby, Spilſby, Welby, & Wiſperton.

WALTERUS BEC de Ereſby.

JOHANNES BEC qui nunc eſt.

| 3 WALTERUS tenuit Luſſeby, Wynceby, Neuton & Fulſtow.

HENRICUS vendidit manerium de Fulſtow STEPHANO DE LANGTON; duxit HAVISIAM.

WALTERUS BEC qui fuit pugil & conſtabularius caſtra Lincoln.

| 4 JOHANNES tenuit Reby in Keſteven & duo alia maneria.

| 5 THOMAS tenuit omnes eccleſias quæ ſpectabant ad donationem fratrum ſuorum.

PEREGRINE BERTY, ſon and heir to RICHARD BERTY, eſq; by his wife CATHERINE, dutcheſs of Suffolk, daughter and ſole heir of WILLIAM lord Willoughby of Eresby, claimed the dignity and title of lord Willoughby of Eresby in right of the ſaid lady CATHERINE his mother, immediately after her deceaſe, *vivo patre*, and did wear his mourning apparel at her funerall in all poynts, as a baron. And was by the Queen's Majeſty admitted to the dignity of lord Willoughby, and to the place and integrity of honor thereunto belonging (his father yet living) on friday 11th. Nov. 1580. 22. ELISAB. by the mouth of ſir WILLIAM CECILL, knt. lord BURLEIGH, lord high treaſourer of England, THOMAS earl of Suſſex, lord high chamberlain, and ROBERT earl of Leiceſter, who by her Majeſty's aſſignment had before heard and ſeen the petition and proofs exhibited and ſhewed by the ſaid PEREGRINE, for the ſame dignity of lord Willoughby of Eresby, and were after report made unto her Majeſty of his right and title to the ſame, commanded by her Majeſty to declare unto him, the ſaid PEREGRINE, that according to his right, her pleaſure was, that he ſhould be named and called lord Willoughby, and be placed, reputed and taken, lord Willoughby of Eresby, which they did in the ſtar-chamber the day and year aforeſaid, even as they were ready to ſit down to dinner there: And the ſame time placed the ſaid PEREGRINE lord Willoughby at the table with them according to his degree, above divers other barons, which dined with them at the table, and did all of them drink to him by the name of lord Willoughby.

The copy of the writ.

Prædilecto & fideli ſuo PEREGRINO BERTYE de Willughby, chevalier, filio & hæredi CATHERINÆ ducissæ Suffolciæ, filiæ & hæredis WILHELMI domini Willughby, nuper de Sum. ad parliament.

ELISABETHA Dei grätia Angliæ, Franciæ, & Hiberniæ regina fidei defenſor, &c. prædilecto & fideli noſtro PEREGRINO BERTY *de Willoughby, chevalier, filio & hæredi* CATHERINÆ *ducisſæ Suffolciæ, filiæ & hæredi* WILHELMI *nuper domini Willughby, ſalutem, &c. Quia de aviſamento conſilii noſtri pro quibuſdam arduis & urgentibus negotiis, nos, ſtatum & defenſionem noſtri Angliæ ac eccleſiæ Angliceanæ concernent. præſens parliamentum noſtrum apud Weſtm. 8°. die Maii anno regni noſtri 15° inchoato per diverſ. prorogation. uſque ad 16 diem Januar. proxim. ſequent. prorogat. apud Weſtm. prædictum teneri ordinavimus, ac ibidem vobiſcum ac cum cæteris prælatis, magnatibus & proceribus dicti regni noſtri colloquium habere & tractat. vobis ſub fide & ligeancia quibus vos tenemini firmiter injungerem mandat. quod ceſſante excuſatione quacunque in hoc præſenti parliamento noſtro dicto 16 die Januar. prox: futur. apud Weſtm. prædictum ſuper dictis negotiis tractat. veſtrumque conſilium impenſum. Et hoc ſicut nos & honorem noſtrum ac ſalvationem & defenſionem regni & eccleſiæ ſupradict. expeditionemque dictorum negotiorum diligitis nullatenus omittatis. T. meipſa apud Weſtm. 7. Januar. anno regni noſtri 23°.*

By vertue of this writ he came to the parliament chamber door on monday 16. January in the year aforeſaid, and was there received honourably by the earl of Leiceſter, deputy to the earl marſhall, and with him two barons the lord HOWARD of Effingham, and the lord EURES, who betwixt them led him in his ordinary apparell to his place next unto the lord ZOUCH of Haringworth, (ſo that day the lord did not wear his robes) Garter going before them, and the earl of Leiceſter, cauſed the lord chancellor to ſignify unto the lords preſent, that her Majeſty had found his right and title to that place and dignity, to be very true and good, and therefore it was their parts to allow of it, and eſteem of him accordingly, who was to receive that place whereunto he was then brought, reſerved always to every of them his right, if they could make proof of their ancientyes, to be ſerved thereby above him the ſaid lord Willoughby.

Barony of *DACRES.*

The claim and title of MARGARET FENYS, ***wife to*** SAMPSON LENNARD, ***esq; to the barony of Dacres, together with the opinions of the right honorable the lordes high threſorer and high admirall of England, unto whom the examination and relation thereof, was by her Majeſtie ſpecially committed.***

To the Queenes moſt excellent Majeſtie,

E. Coll. Greg^y. King Lanc^r. Herald.

IN moſt humble wiſe ſhoweth unto your ſacred Majeſtie, your lowly ſuppliant and humble ſervant, MARGARET, ſiſter and ſole heire to GREGORY late lord Dacres deceaſed, and wife unto SAMSON LENNARD, eſquier, That whereas heretofore in the time of king HENRY VI. your Majeſtie's noble progenitor, one THOMAS lord Dacre, aunceſter unto your Highneſs ſuppliant, dying, JOANE ſoale daughter and heire of ſir THOMAS DACRE knight, eldeſt ſonne of the ſaid lord THOMAS, was then found to be his heir at the common law; and thereupon both ſhe and her eldeſt iſſue, by one ſir RICHARD FENYS, knt. her husband, enjoyed the name and title of the barony of Dacres, and the place thereof in the high courtes of parliament as barons and peers of this realm, in their poſterity continued and held, with all other privileges and preheminencies to ſuch a dignity belonging: From the bodies of which ſir RICHARD FENYS, and dame JOANE his wife, your Highneſs ſuppliant is lineally deſcended, and by the late deceaſe of her ſaid lord and brother without iſſue, the only heir now ſurviving. It may pleaſe your moſt excellent Majeſty, of your accuſtomed clemency and favour, to regard and conſider the humble ſuit and petition of your ſaid ſuppliant and ſervant, not proceeding of any ambitious or aſpiring mind, but only for the diſcharge of her duty to GOD, and her poſteritie, in the orderly care and preſervation of her birth-right, and juſt intereſt to the name, ſtile and honour of the aforeſaid barony of Dacres, agreeing with the moſt ancient rule and cuſtomes of this realm of England, by the which the daughters and heirs of barons, have been allwaies holden capable in themſelves, and likewiſe wont to convey unto their offspring and iſſues, the names, ſtiles and dignities, of their fathers baronies: That as the titles and dignities of all the political nobility of this your Highneſs kingdome, flowing from your royal throne, as from the firſt ſpring and fountain (by the ſpecial prerogative that GOD hath inſeparably annexed thereunto) are alſo to be upholden and preſerved thereby, to their true and right-full heirs, upon lawfull claim and orderly intimation of their juſt titles: Even ſo your ſacred Majeſtie would now be pleaſed to commit and command the hearing, examining and relation of all due circumſtances concerning the title to the name, ſtile, and dignity, of the ſaid barony of Dacres, unto the wiſdomes and judgements of the lord high treſorer of England, together with the reſt of their honourable lordſhips your Majeſtie's ſpecial commiſſioners for ſuch cauſes allready appointed; and therein for the behoof of your moſt humble ſuppliant, now capable thereof by the common laws and heroical cuſtomes of your kingdome, to ſignify your gracious mind and princely pleaſure, whereunto your ſaid ſuppliant and ſervant, in all humility and obedience, doth moſt willingly ſubmitt both herſelf, and the whole cauſe; who with her ſaid husband, and many children, ſonnes and daughters, do daily pray to GOD for the happy preſervation of your royal eſtate, and moſt ſacred perſon.

The

The letters patents of 37th of king HENRY VI.

These letters patents of HENRY VI. are of record in the tower in Latin.

HENRY, by the grace of God king of England and France, and lord of Ireland, to all perſons to whom theſe preſents ſhall come, greeting: Know ye that whereas THOMAS DACRE, late lord Dacre, and one of the barons of our realm of England, and ſuch ſtate and dignity to him and his heirs he did inherit, is now gone the way of all fleſh, unto whom JOANE, the wife of our welbeloved and faithfull knight RICHARD FENYS is couſin and next heir, that is to ſay, daughter of THOMAS, firſt begotten ſonne of the ſaid late lord Dacre; wee, in conſideration of the premiſſes, do accept, declare, and repute, the ſaid our knight to be lord Dacre, and one of the barons of our realme aforeſaid; to have and enjoy all preheminence to ſuch ſtate belonging, in all preſenties, places, and times convenient for the ſame: In witneſs whereof theſe our letters wee have cauſed to be made patent. Witneſſe our ſelf at Weſtminſter the ſeaventh day of November, in the year of our reign the 37th.

The awarde of 13. of king EDWARD IV. between ſir RICHARD FENYS, knt. lord Dacre, and ſir HUMPHREY DACRE, knt.

This award of EDWARD IV. is to be ſhewed, and hath been ſhewed, to many, under the ſaid King's privy ſeal and ſign manuel. 5.

EDWARD, by the grace of God king of England and France, and lord of Ireland, to all chriſtian people ſendeth greeting in our Lord God everlaſting: Foraſmuch as we conſidering, that divers variances, [illegible], demands and debates, had and like to have been continued betwixt ſir RICHARD FENYS, knt. lord Dacre, and JOANE his wife, couſin and heire to THOMAS DACRE, knt. late lord Dacre, and PHILIPPA his wife, that is to ſay, daughter to THOMAS, ſon to the ſaid THOMAS and PHILIPPA, on that one party, and ſir HUMPHREY DACRE, knt. ſon to the ſame THOMAS DACRE, knight, late lord Dacre, on that other party; of and upon, and for all caſtles, lordſhips, mannors, lands, tenements and advowſons, that ſometime were the ſaid THOMAS DACRE, late lord Dacre, and PHILIPPA his wife, or either of them; for the appeaſing of which variances, claims, demands and debates, either of the ſaid parties were bounden to other by their eſcripte obligatory in the ſumme of ten thouſand markes, to abide our awarde and arbitrement of the premiſſes. Wee thereupon taking upon us the burden and charge of the ſaid arbitrament, have heard the titles, evidences and intereſts for both parties of the premiſſes: And for more riper declaration of the ſame, the title of both parties of the premiſſes, our judges have ſhewed and declared before us, and the lords ſpiritual and temporal in our court of parliament; wee will, and by theſe preſents awarde upon the premiſſes, that the ſaid RICHARD FENYS, in right of JOAN his wife, and the heirs of her body lawfully begotten, be reputed, had, named, and called, the lord Dacre; and that the ſaid RICHARD FENYS, and the heirs of the body of the ſaid JOANE begotten, keep, have, and uſe the ſame ſeat and place in everiche of our parliaments, as the ſaid THOMAS DACRE, knight, late lord Dacre, had uſed and kept; and that the heirs of the body of the ſaid THOMAS DACRE, knight, late lord Dacre, begotten, have and hold to them, and to the heirs of their bodies begotten, the mannor of Holbeache, &c. And furthermore wee awarde that the ſaid HUMPHREY DACRE, knight, and the heirs male of the body of the ſaid THOMAS late lord Dacre coming, be reputed, had, named and called, the lord Dacres of Gilleſland, and he, and the heirs males of the ſaid THOMAS late lord Dacre, to have, uſe and keep the place in our parliaments next adjoyning, beneath the ſaid place that the ſaid RICHARD FENYS, knt. lord Dacre, now hath and occupieth, and the heirs of the ſaid JOANE his wife, on her body begotten, ſhall have and occupy; and that the heires males to THOMAS DACRE, knight, late lord Dacre, ſhall have to them and to the heirs males of their bodies begotten, the mannors of Irthington, &c. Given at our palace of Weſtminſter, under our privy ſeal, the eighth day of April, the thirteenth year of our reign.

Note plainly by this pedigree, that this barony was not entailed to the heirs males, but deſcended to the heirs general; and therefore MAWDE the daughter and heir of HUBERT DE VAUX the fifth baron, did endow THOMAS MOULTON her husband with the dignity thereof, and ſo it deſcended to her ſon THOMAS: MARGARET MOULTON the daughter and heir of THOMAS MOULTON the eighth baron, did the like to her husband RANULPH DACRE, and to her iſſue, and JOANE the couſin and heir to THOMAS DACRE the thirteenth baron, did the like to her husband ſir RICHARD FENYS, and to her iſſue.

Note alſo the letters patents declaratory of king HENRY VI. that the King did not create the ſaid RICHARD FENYS lord Dacre, but doth accept, declare, and repute him ſo to be: And he doth further declare the only reaſon of his ſuch acceptation to be, becauſe he had married the couſin and heir of him that held the ſaid barony, to him, and to his heirs general.

Note the arbitration of king EDWARD IV. in the preface thereof, he calleth ſir RICHARD FENYS lord Dacre, but he calleth ſir HUMPHREY DACRE only by the name of a knight; and he awardeth that ſir RICHARD FENYS, in right of his wife, ſhall be ſo reputed and called; and that he and her ſaid heirs keep the ſame place in parliament, which the ſaid THOMAS lord Dacre had and uſed; whereas he reſtrayned the title of honour, which hee awarded to ſir HUMPHREY DACRE, to the heirs males of the body of the ſaid THOMAS lord Dacre, and appointed them the next place in parliament, beneath the heires of the body of the ſaid JOANE.

Laſtly it is plain that the ſaid MARGARET, the wife of SAMPSON LENNARD is the next iſſue and heir now living, deſcended of the body of the foreſaid JOANE, mentioned in the ſaid awarde, being the only ſiſter and heir, to GREGORY laſt lord Dacres deceaſed without iſſue.

The opinions and relation of the lords commiſſioners.

WHEREAS at the humble ſuit by petition exhibited unto her moſt excellent Majeſty, by MARGARET, ſiſter and heir unto GREGORY late lord Dacre, and wife unto SAMPSON LENNARD eſquier, for and in the behalf of her intereſt, right and titſe, to the name, ſtile and dignity of the barony of Dacre, upon the death of her ſaid late lord and brother: It pleaſed her Highneſs to command and commit the hearing, examining and relation thereof unto us WILLIAM CECILL baron of Burghley, lord high treſorer, and CHARLES lord HOWARD of Effingham, lord high admiral of England, as by the ſaid MARGARET was humbly deſired, and as in the ſaid petition at large appeareth. Wee according to the truſt committed unto us, have ſeriouſly and with all diligence, performed the ſame; and finding the claim by the petition, to be duely and ſubſtantially grounded and proved, do ſignify our opinions thereof, namely, That as the ſaid barony of Dacre appeareth to have deſcended formerly unto the heirs generals, when, and as often as the heirs males thereof have failed; and that the ſaid MARGARET, by the death of her ſaid lord and brother, without iſſue, is the only heir of that houſe or family now ſurviving, her Majeſtie may, at her good pleaſure, allow unto her the name, ſtile and dignity of the ſaid baronie with the preheminences thereto belonging, following therein the example of her Highneſs moſt noble progenitors in like caſes: Which being our opinions, we have thought it our duties to ſet down to her Majeſtie's view, and abſolute cenſure, unto whom (next under GOD) as by ſpecial prerogative, the original inſtitution of all titles of honour doth belong; ſo wee referr the determination hereof to her ſacred wiſdome, royal aſſent, and final approbation, ſubſcribing theſe preſents in all reverence and humility, with our ſeveral handes, the laſt day of February, in the nine and thirtieth year of her Majeſtie's moſt happy reigne 1596.

W. BURGHLEY. C. HOWARD.

Proofs

Proofs and Precedents, that the law of England ever was, and yet is, that where the dignity of an earldome or barony, is actually descended to an heir female, that her husband, after he hath had issue by her, is *de jure & consuetudine regni Anglie*, to enjoy the said dignity during his life.

FIRST, in all other cases of inheritance descended in possession, the husband after issue had, enjoyeth by the law and courtesy of England, the benefit to hold the same, in his own right, during his life; it seemeth therefore likely that it should be so also in this case; and to prove that it hath been heretofore so taken, 20. HEN. VI. in a patent to RICHARD earl of Salisbury, there be these words, *Quodque charissimus consanguineus noster,* RICHARDUS *nunc comes Sarum, qui* ALICIAM *filiam & hæredem,* THOMÆ *nuper comitis Sarum adhuc superstitem duxit in uxorem, & cum eadem* ALICIA *prolem tempore mortis dicti* THOMÆ *habuit, & habet superstitem de presenti; eoque pretextu &c. Idem* RICHARDUS *nunc comes, nomen, statum & honorem comitis Sarum, &c. habet, ac pro tempore vite sue de jure pretextu premissorum habere debet, &c.*

In another patent, 27. HEN. VI. made to RICHARD the eldest son of the foresaid earl of Salisbury, having married ANNE the sister and heir of HENRY, who was earl of Warwick of ancient descent, to him and to his heirs general, and duke of Warwick by patent to him and to the heirs males of his body, the said King did of his grace grant unto the said RICHARD, that he should be earl of Warwick, *Licet ipse & prædict.* ANNA, *exitum inter eos ad presens non habent*, whereby it is plain that the law was then taken, that if he had had issue, he should have had it *de jure*.

There are also in the hands of divers antiquaries, ancient copies of a rescript from ALEXANDER king of Scots, unto king HENRY III. king of this realme, in these words: *Excellentissimo principi & domino,* HENRICO *Dei gratiâ illustri regi Anglorum, domino Hibernie & duci Aquitanie,* ALEXANDER *eadem gratiâ rex Scotiæ salut. in ipso qui dat salutem regibus: Cum* NICHOLAUS DE BOLTBY *baro vester per legem Anglie, ratione prolis quam idem* NICHOLAUS *procreavit de* PHILIPPA *filia & hærede* ADE DE TYNDALL, *qui eandem baroniam cum libertatibus & consuetudinibus, & omnibus aliis juribus & pertinentiis suis de vobis tenuit; &* ADAM DE BOLTBY *filius & heres predicte* PHILIPPE, *de baronia predict. coram vobis venerint, & vobis intimaverint, quod* WILHELMUS SWINBORNE *ratione ville de Stennorth que est infra libertatem nostram de North Tyndall, & quam tenet hereditarie, cujus ville tenentibus antecessores predict.* PHILIPPE *concesserunt liberam communiam infra communia manerii sui de Langley, sicut predictus* ADAM *filius & hæres predict.* PHILIPPE *intimavit, quod est infra comit. Northumbrie, & caput baronie predict. de nobis tenerunt in capite, nos, &c.——Teste meipso apud Kinrois 7° die Januarii, anno regni nostri* 23°. This writing testifieth plainly, that the law of England was so taken at that time; and it appeareth by the King's Majestie's records in the tower, and in the exchequer, that ADAM DE TINDALL was a baron, and that PHILIPPA his daughter and heir, *tenuit per baroniam de rege Anglie*; and that NICHOLAS BOLTBY, her husband, was 48 HEN. III. summoned to come to the King with horses and armour, *inter barones & proceres regni.* By this law and curtesie of England, in the very barony which the lady MARGARET DACRE, wife to SAMPSON LENNARD now inheriteth, THOMAS MOULTON marrying in the time of EDWARD I. with the then heir general of HUBERT DE VAUX, was allowed to be a baron of this realm.

After him REYNOLD DACRE, marrying with the daughter and heir of the said barony, was in the time of EDWARD II. admitted to the said dignity, and to the ancient place of his wife's ancestors: Afterwards RICHARD FENYS marrying with the heir general of Dacre, was both in the time of HENRY VI. and in the time of EDWARD IV. declared to be a baron of this realm, and held the place in parliament, of the ancient barony; and now SAMPSON LENNARD is in the same case, concerning the self same barony.

Concerning other baronies of this realm in the like caſe.

Sum. 1. R. II. JOHN FITZ-ALAN, a younger ſon to RICHARD FITZ-ALAN, earl of Arundel, married ELEANOR, daughter and heir of JOHN lord Mautravers, and having iſſue by her, was ſummoned to parliament in the firſt year of RICHARD II. and called lord Mautravers, and enjoyed the place of his wife's anceſtors.

Eſcaet. 7. R. II. Sum. clauſ. in dorſo 7. R. II. ELIZABETH, daughter and heir of JOHN lord Strange of Blackmere, dyed without iſſue, *anno* 7° RICH. II. ANKARETA, her aunt, was her heir, married to RICHARD TALBOT, eldeſt ſon of GILBERT lord Talbot, then living; RICHARD having iſſue by her, was in the life of his father a baron, and called to parliament, and enjoyed the place of his wife's anceſtors.

Eſcaet. 6. R. II. Sum. 7. R. II. WILLIAM lord Furnivall, alſo of Hallomſhire, about the ſame time dyed, and JOAN, the wife of THOMAS NEVILL, was found his daughter and heir; her husband having iſſue, was preſently ſummoned to the parliament, 7° RICH. II. and called lord Furnivall, and took that place accordingly.

Eſcaet. 9. H. IV. Sum. 11. H. IV. JOHN lord Cobham had iſſue JOANE his only child; ſhe was married to JOHN DE LA POLE, ſhe dyed in the life of her father, leaving behind her a daughter called alſo JOANE her heir; this JOANE was thrice married in the life of her grandfather, her fourth husband was ſir JOHN OLDCASTLE, they had iſſue between them, JOANE that dyed a child, JOHN lord Cobham dyed 9. HEN. IV. Sir JOHN OLDCASTLE was ſummoned to the next parliament, 11°. HEN. IV. and was called lord Cobham, and took that place.

Eſcaet: circa 31. H. VI. Sum. 33. H. VI. ROBERT lord Willoughby, dyed about 31. HEN. VI. JOAN, his daughter and heir, being married to RICHARD WELLES, eldeſt ſon of LIONELL lord Welles, and he having iſſue by her, was, in the life of his father, 33. HEN. VI. ſummoned to the parliament, by the name of RICHARD WELLES de Willoughby, and took the place of Willoughby.

Sum. 22. ED. IV. RICHARD HASTINGS, knt. married to JOAN, the daughter and heir of the ſaid RICHARD WELLES, and having iſſue by her, was, in 22. EDW. IV. ſummoned to the parliament by the name of RICHARD HASTINGS de Welles & Willoughby.

Sum. 22. ED. IV. GEORGE STANLEY, knt. ſon and heir apparent of THOMAS lord Stanley, afterwards earl of Derby, married JOAN, the daughter and heir of JOHN lord Strange of Knockyn, and having iſſue by her, was ſummoned alſo to parliament, 22. EDW. IV.

Sum. 7. H. VII. WILLIAM LOVELL, knt. ſecond ſon of WILLIAM lord Lovell, married ALIANORE, daughter and heir of ROBERT lord Morley, and having iſſue by her, was ſummoned to parliament *anno* 7°. HEN. VII.

Many other precedents there be, as well of earls, as of barons, in the like caſe, whereof the heralds can give plentiful inſtance: And in the time of king HENRY VIII, one Mr. WIMBISH challenged the place of a baron in right of his wife, but he was put by it becauſe he had no iſſue by his wife; and that reaſon is ſet down among the remembrances of that buſineſs.

To the King's moſt excellent Majeſty.

IN all humbleneſs beſeecheth your Majeſty, your loyal and moſt humble ſubject MARGARET, ſole ſiſter and heir to GREGORY, late lord Dacre, and wife of SAMPSON LENNARD of Herſt Monceux in the county of Suſſex: That whereas long ſithence one HUBERT DE VAUX, a baron of this realm of England, had iſſue one only daughter and heir named MAWDE, married to THOMAS MOULTON, to which ſaid MAWDE, after the deceaſe of the ſaid HUBERT, the ſaid barony deſcended, and after ſome deſcents of the ſaid barony in the name of the MOULTONS, the laſt of that name had iſſue one only daughter and heir called MARGARET, married unto RANULPH DACRE, to which ſaid MARGARET, after the deceaſe of her father, the ſaid barony likewiſe deſcended, and after ſome deſcendents

ſcendents in the name of DACRE, the ſaid barony likewiſe deſcended to JOAN, couſin and next heir of the then laſt baron Dacre, whoſe title to the ſaid barony was confirmed, both by the letters patents of your Majeſty's noble progenitor king HENRY VI. as by an award made by king EDWARD IV. wherein was further awarded, That the heirs of the body of the ſaid JOAN, lawfully begotten, ſhall be reputed, had, named and called the lord Dacre, and keep and uſe the ſame ſeat and place in parliament, as the then laſt lord Dacre had uſed and kept.

Now foraſmuch, moſt gracious Sovereign, as after ſome deſcents of the iſſue of the body of the ſaid JOAN, by the name and ſtile of the lord Dacre, GREGORY, the laſt of them, is late deceaſed without iſſue of his body begotten, whereby your Majeſty's moſt humble ſuppliant, ſole ſiſter of the ſaid GREGORY, and next heir of the body of the ſaid JOAN, is become as well next heir to the ſaid honour or barony, as inheritrix to the ancient lands and hereditaments to the ſaid barony belonging. May it therefore pleaſe your moſt excellent Majeſty, of your gracious and princely goodneſs, to refer the conſideration of the ſaid deſcents, and of your Majeſty's ſuppliant's claim and title to the barony of Dacre, unto the moſt honorable lordes, commiſſionated by your Majeſty for the hearing and determining of marſhal cauſes, that if her title be by them approved, ſhe may find ſuch your Majeſty's princely grace towards her for confirmation of her right, as others in the like caſe have found and received, as well from your moſt excellent Majeſty, as from your Highneſs's moſt royal and noble progenitors, and your Majeſties ſuppliant, &c.

WHEREAS at the humble ſuit, by petition exhibited unto his moſt excellent Majeſty, by MARGARET, ſole ſiſter and heir of GREGORY late lord Dacre, and wife of SAMPSON LENNARD of Herſt-Monceux in the county of Suſſex, for and in the behalf of her intereſt, right and title to the name, ſtile, dignity and place of the barony of Dacre, upon the death of her ſaid late brother; it pleaſed his moſt excellent Majeſty to command and commit the hearing and determining thereof to us, THOMAS earl of Dorſet, lord high treſorer of England, LODOWIKE duke of Lenox, CHARLES earl of Nottingham, lord high admiral of England, THOMAS earl of Suffolke, lord chamberlain, EDWARD earl of Worceſter, maſter of his Majeſty's horſe, HENRY earl of Northampton, lord warden of the cinque ports, commiſſionated by his Majeſty for the hearing and determining of marſhal cauſes; and wee, according to his Majeſty's command, and our duties, having ſeriouſly, and with all requiſite diligence, examined the Pedigrees and deſcents of the ſaid barony, and finding that one HUBERT DE VAUX, being an ancient baron of this realm, had iſſue MAWDE, his daughter and ſole heir, married to one THOMAS DE MOULTON, to whom, and her poſterity by him, the ſaid dignity and honour deſcended, and was accordingly enjoyed; from whom lineally iſſued one other THOMAS DE MOULTON, who had one only daughter and heir named MARGARET, married unto RANULPH DACRE, in which name the ſaid barony, title and dignity continued, until the ſame fell upon JOAN, the ſole grandchild and heir of THOMAS lord Dacre, being married to ſir RICHARD FENYS, knt. in whoſe time, as well by letters patents from king HENRY VI. as by an award made by king EDWARD IV. the ſaid honour and dignity was eſtabliſhed and confirmed to and in the ſaid JOAN, and to the heirs of her body; after whoſe deceaſe the ſame title, honour and dignity continued by divers deſcents in her iſſue, and is now wholly deſcended upon the ſaid MARGARET the ſaid petitioner, by the death of GREGORY, late lord Dacre, without iſſue of his body, as ſole ſiſter and heir of the ſaid GREGORY, and couſin and ſole heir of the body of the ſaid JOAN, doe, by the privity and aſſent of his royal Majeſty, publiſh, declare and adjudge, that the ſaid MARGARET, ought to bear, have and enjoy the name, ſtate, degree, title, ſtile, honour, dignity, place and precedency of the ſaid barony, to have and to hold to her, and to the iſſue of her body, in as full and ample manner to all

intents

intents and purpoſes, as any of her anceſtors enjoyed the ſame; and that the children of the ſaid MARGARET, may, and ſhall have, take and enjoy, the place and precedency reſpectively, as the children of her anceſtors, barons of Dacre, have formerly had and enjoyed. In witneſs whereof we have hereunto ſubſcribed our names, and put to our ſeals, the eighth day of December, in the ſecond year of the reign of our ſoveraign lord JAMES, by the grace of GOD, of England, France and Ireland, king, defender of the faith, *&c.* and of Scotland the eight and thirtieth.

T. Dorſet, Lenox, Nottingham, Suffolke, E. Worceſter, H. Northampton.

To the King's moſt excellent Majeſtie.

IN all humbleneſs beſeecheth your moſt excellent Majeſty, your loyal and obedient ſubject SAMPSON LENNARD of Herſt-Monceux in the county of Suſſex; That whereas it hath formerly pleaſed your moſt royal Majeſty to commit the title of MARGARET lady Dacre, ſole ſiſter and heir of GREGORY, late lord Dacre, wife of your ſaid ſuppliant, to receive a hearing and final determination by the moſt honourable commiſſioners authorized by your Majeſty, for the office of the earl marſhal, who upon deliberate and adviſed conſideration, have according to right, ſettled in her, and upon her children, the ſaid barony of Dacres, and for that your ſaid ſuppliaunt is very credibly informed, that the law of honour is, and the cuſtom and common uſage thereof ever hath been, as appears by very many precedents, that the husband's of ſuch wives, after iſſue by them had, have enjoyed the ſtile, title, and dignity of barons, in their wives right: That it would pleaſe your princely Majeſty to refer the hearing of your ſuppliant's title to the ſaid commiſſioners, there to receive ſuch cenſure and final determination, as to their lordſhips wiſdomes ſhall be thought fit, and your ſaid ſuppliant ſhall for ever be bound to pray unto GOD for your Majeſties long, happy and proſperous reign over us.

Our pleaſure is, that the Commiſſioners marſhal ſhall conſider of this petition, and report to us the truth of the caſe, that we may determine our pleaſure.

JAMES, by the grace of God king of England, Scotland, France and Ireland, defender of the faith, *&c.* to all men to whom theſe preſents ſhall come, greeting: Whereas our truſty and welbeloved ſubject and ſervant SAMPSON LENNARD formerly married MARGARET, ſiſter and ſole heir to GREGORY, late lord Dacre, by whoſe death, without iſſue, the ſaid barony of Dacre deſcended upon her, the ſaid MARGARET, and her heirs, who was in her life time, in the ſame barony of Dacre, by our ordinance inveſted, together with all honours, privileges, immunities, titles, and precedencies thereunto belonging and appertaining; and whereas the ſaid SAMPSON LENNARD, pretending title to the ſame barony, in right of his ſaid wife, as having iſſue by her, by his petition unto us humbly deſireth, that we would be graciouſly pleaſed to referr the conſideration of his ſaid right, to the lords in commiſſion for marſhal cauſes, whereunto we have pleaſed to condeſcend; and for that the ſaid lords, upon due and mature examination of his ſaid title, did find baronies upon the like right, conferred upon the husband in ſeveral families, and in this particular barony of Dacre, three ſeveral precedents, whereby it plainly appeareth, the husbands, in like caſes, were dignified with the titles of barons: And for that, upon the relation thereof, by the ſaid lords, wee were purpoſed to have given him the ſame meaſure of juſtice that others, in like caſes, have formerly received from our noble progenitors, which our gracious determination, being by the death of the ſaid lady Dacre, and ſo by the immediate deſcent of the ſaid barony upon her

her ſon made fruſtate, and our ſaid meaning in that behalf prevented, wee, out of our gracious conſideration of his ſaid former right, as alſo of his affectionate and duriful deſire, in all things from time to time, to advance our ſervices, do, by theſe preſents, out of our certain knowledge and meer motion, give, grant, and confirm to him, the ſaid SAMPSON LENNARD, for term of his life, the like place and precedency, that the eldeſt ſon of the lord Dacre of the ſouth hath formerly had and enjoyed; and our will and pleaſure is, that in all our commiſſions, and in all places and aſſemblies, he ſhall be ranked and marſhalled above the eldeſt ſons of all barons, except of ſuch barons as, by reaſon of their antiquity, have place and precedency above the lord Dacre of the ſouth; and that he ſhall have precedency accordingly, as aforeſaid, and above all others of inferior degree and quality whatſoever; and that he ſhall, after his death, be buried as the eldeſt ſon of a baron: And our further will and pleaſure is, that this our grant, or any thing therein contained, ſhall not be taken for precedent by any to make ſuit for our like grace hereafter, this being grounded upon the particular reaſons aforeſaid: In witneſs whereof we have cauſed theſe our letters to be made patents, witneſs our ſelf at Weſtminſter, the ſecond day of April, in the tenth year of our reign of England, France, and Ireland, and of Scotland the five and fortieth, 1612.

Certain precedents and examples to prove that ſuch as have been barons of parliament, in their wives right, have ſo continued unto their lives end, although their wives were dead long before, which are perfectly to be proved by record.

ELIZABETH, ſiſter and heir to JOHN lord Say, was firſt married to JOHN DE FALLESLE, knight, and he, in her right, was ſummoned to parliament in the ſeventh year of king RICHARD II. and afterward ſo long as he lived: After his death ſhe was married again to ſir WILLIAM HERON, knight, who likewiſe, in her right, was ſummoned to parliament in the 17th. year of the ſame King, and ſo continued: She dyed the 8th day of July, in the 23d year of the ſame king RICHARD, as it appeareth by the office after her death: After, he continued lord Say until he dyed, as it is manifeſt both by the ſummons of parliament, and alſo by the charter roll of the firſt year of king HENRY IV. wherein he is divers times a witneſs (amongſt other great perſons) to the King's charter by this name, WILHELMUS HERON *dominus de Say, ſeneſchallus hoſpitii regis*: After this he dyed, without iſſue, the 30th day of October, in the ſixth year of the ſame king HENRY.

THOMAS NEVILL, knight, younger brother to RALPH NEVILL, firſt earl of Weſtmerland, married JOAN, only daughter and heir to WILLIAM lord Furnivall of Hallomſhire, knight, and, in her right, was ſummoned to parliament, and had iſſue by her MAWDE, married to JOHN TALBOT, firſt of that ſurname, earl of Shrewsbury: After the death of this JOAN, he took to wife ANKARETA, the widow of RICHARD lord Talbot, and by her had iſſue JOAN, who, at the time of her father's death, was three years old and more; he was ſummoned to parliament in the time of his ſecond wife, by the name of THOMAS NEVILL de Hallomſhire, as it appeareth in the ſummons to parliament in the ſixth year of king HENRY IV: He died the Monday before Palm-ſunday, in the eighth year of the ſame King.

RICHARD WELLES, knight, ſon and heir apparent to LEONARD lord Welles, married JOAN, only daughter and heir of ROBERT lord Willoughby, and in her right was ſummoned to parliament, in the 33d year of king HENRY VI. by the name of RICHARD WELLES, lord of Willoughby: This LEO lord Welles was attainted by parliament, in the firſt year of king EDWARD IV. and ended his life the ſame year; likewiſe the foreſaid JOAN, lady Willoughby, dyed the ſame year, as it appeareth by an office taken after her death; and this RICHARD

WELLES, knight, continued lord Willoughby afterwards, although his father was attainted, and his wife dead, in whose right he enjoyed the name and dignity of lord Willoughby, as it plainly appeareth in the summons of parliament in the second and sixth years of this king EDWARD, where he is summoned by the name of RICHARD WELLES de Willoughby, chivaler, and in the parliament roll the seventh year of the same king EDWARD, by his petition he prayeth to be restored to his father's lands and dignity, the beginning of which petition followeth.

Pro domino de Willoughby.

Please it your Highness, of your most merciful and gracious disposition, to have in your tender consideration, how that your humble subject, and true liegeman RICHARD WELLES lord Willoughby, eldest son to LEONARD, late lord Welles, whom GOD assoile, &c. as it is more at large to be seen in the same roll.

EXcellentissimo principi & patri in CHRISTO, *charissimo domino* HENRICO DEI *gratiâ illustri regi Angliæ, domino Hiberniæ & duci Aquitaniæ,* ALEXANDER *eadem gratiâ rex Scotiæ salutem, in ipso qui dat salutem regibus: Cum* NICHOLAUS DE BOLTBY, *baro vester de vobis teneat in capite baroniam de South Tindall, per legem Angliæ, ratione prolis quam idem* NICHOLAUS *procreavit de* PHILIPPA *filia & hærede* ADE DE TYNDALL, *qui eandem baroniam cum libertatibus & consuetudinibus, & omnibus aliis juribus & pertinentiis suis de vobis tenuit; &* ADAM DE BOLTBY *filius & heres predictæ* PHILIPPÆ, *de baronia prædicta, coram vobis venerit, & vobis intimaverit, quod* WILHELMUS DE SWINBORNE, *ratione villæ de Staworth, quæ est infra libertatem nostram de North Tyndall, & quam tenet hereditarie, cujus villæ tenentibus antecessores predict.* PHILIPPÆ *concesserunt liberam communiam infra communiam manerii sui de Langhley, sicut prædictus* ADAM *filius & hæres prædictæ* PHILIPPÆ *vobis intimavit, quod est infra comitat. Northumbriæ, & caput baroniæ prædictæ, & quod de vobis tenetur in capite. Solium ejusdem communia ad se & homines suos de Staworth appropriare nititur in ipsorum* NICHOLAI & ADÆ *exhæreditationem manifestam ut dicunt; & quia periculum exhæreditationis tempore custodiæ vobis & hæredibus vestris in hoc posset provenire temporibus futuris, si ita fuisset. Supra his excellentiæ vestræ significamus, quod illud solium prædictæ communiæ de qua contentio movetur inter partes prædictas, non est de solo de Langley, quod est manerium prædicti* NICHOLAI *de South Tindall, & infra comitat. Northumbr. sed de solo de Staworth, quod est manerium* WILHELMI DE SWINBORNE, *infra libertatem nostram North Tindall, sicut per prædictum* WILHELMUM, *& alios fideles nostros intelleximus; nos vero petitioni vestræ adquiescentes, & periculum vestrum, & nostrum ac prædictarum partium vitare volentes perpendentes quod pax & tranquillitas inter prædictas partes per aliam viam, quam per ambulationem fieri non potest, sicut nobis per literas vestras significastis, rogantes ut perambulationi prædictæ assensu præbere unus per literas nostras patentes, & quod nos injungerimus prædicto* WILHELMO, *ad ponendum se in perambulationem illam, & ipsum* WILHELMUM *ad vos mitteremus cum literis nostris patentibus assensum nostrum super hoc testificantibus in quindena sancti Hillarii proximum futurum & cum prædicta villa de Langley & Staworth, sita sunt in confinio comitatus Northumbr. & libertatis nostræ de North Tindall, & per illam perambulationem certa devisa fieri debent inter prædictum comitatum & prædictam libertatem nostram ipsi perambulationi assensum nostrum præbemus. Ita quod medietas ipsorum per quos ipsa perambulatio, fieri debet sit de comitat. Northumbr. & alia medietas de libertate nostra North Tindall, & mandabimus ballivo nostro de North Tindall quod ipse venire faciat tot & tales de libertate nostrâ North Tindall ad certum diem, & ad prædictum locum ubi contentio movetur, secundum quod vicecomes vester Northumbr. & ballivus noster Tindall superbiis inter ipsos providebunt. Ita quod perambulatio illa non remaneat pro defectu juratorum libertatis nostræ Tindall. In cujus rei testimonium has literas nostras assensum nostrum super hoc testificant, vobis transmit-*

timus

timus patent. una cum literis prædicti WILHELMI DE SWINBORNE *patentibus assensum summ formæ prædictæ testificantibus si ad diem prædictum coram vobis personaliter interesse non poterit. Teste meipso apud Kinros 7° die Januarii anno regni nostri 25°.*

EXcellentissimo principi domino HENRICO *Dei gratiâ illustrissimo regi Anglie, domino Hibernie & duci Aquitanie,* WILHELMUS DE SWINBORNE *salutem. Cum grævi infirmitate præpeditus ad curiam vestram coram vobis à die sancti Hillarii in* XV^to^. *die personaliter accedere non possum, ut perambulationi faciendæ inter manerium domini* NICHOLAI DE BOLTBY *de Langley quod est infra comitatum vestrum Northumbriæ, & manerium meum de Stawerth, quod est infra libertatem domini mei regis Scotiæ in Tyndall secundum quod per literas vestras domino meo dominio regi Scotie significastis vestre super his excellentiæ significo quod perambulationi prædictæ assensum meum præbeo, ita tamen quod medietas illorum per quos perambulatio prædicta fieri debet, sit de comit. vestro prædicto & alia medietas de libertate domini mei prædicta, secundum quod continetur in literis patentibus prædicti domini mei: In cujus rei testimonium has literas meas vobis mitto patentes assensum meum super præmissis testificantes, una cum literis prædicti domini mei patentibus super prædictis vobis transmissis. Datum apud Halghton in crastino sancti Hillarii, anno regni regis* ALEXANDRI *regis Scotiæ, vicesimo tertio.*

A pedigree taken out of an old book, remaining now with my lord WILLIAM HOWARD, sometime belonging to the priory of Lanercost.

Hæc sunt nomina baronum & dominorum de integra baronia Gilleslandie, & dominorum parliamenti à conquestu Anglie, acfundator. istius monasterii.

HUBERTUS DE VALLIBUS *primus dominus parliamenti.*
ROBERTUS DE VALLIBUS, *secundus dominus parliamenti, filius ejus, & primus fundator istius monasterii.*
RANULPHUS *frater ejus, dominus tercius parliamenti.*
ROBERTUS *filius* RANULPHI, *dominus quartus parliamenti.*
HUBERTUS DE VALLIBUS *filius* ROBERTI, *quintus dominus parliamenti.*
MATILDIS DE VALLIBUS, *filia* HUBERTI DE VALLIBUS, THOMAS MULTON *maritus dicte* MATILDIS, *sextus dominus parliamenti.*
THOMAS MOULTON *filius dicte* MATILDIS, *septimus dominus parliamenti.*
THOMAS MOULTON *filius dicti* THOME, *dominus octavus parliamenti.*
MARGARETA MOULTON *filia dicti* THOME, RANULPHUS DACRE *maritus ejus, dominus nonus parliamenti.*
RANULPHUS DACRE *filius dicte* MARGARETE, *dominus decimus parliamenti.*
HUGO DACRE *frater dicti* RANULPHI, *dominus undecimus parliamenti.*
WILHELMUS DACRE *filius dicti* HUGONIS, *dominus duodecimus parliamenti.*
THOMAS DACRE *filius dicti* WILHELMI, *tertio decimus dominus parliamenti.*
RANULPHUS DACRE *filius dicti* THOME, *quarto decimus dominus parliamenti.*
HUMFRIDUS DACRE *frater dicti* RANULPHI, *quinto decimus dominus parliamenti.*
THOMAS DACRE *filius dicti* HUMFRIDI DACRE, *sexto decimus dominus parliamenti.*
WILHELMUS DACRE *filius dicti* THOME DACRE, *septem decimus dominus parliamenti.*
THOMAS DACRE *filius dicti* WILHELMI, *octo decimus dominus parliamenti.*
GEORGIUS DACRE *filius dicti* THOME DACRE, *dominus, nono decimus & ultimus, obiit & sepultus est apud Thetford.*

It is to be noted that THOMAS DACRE, herein mentioned for the 13th baron, had iſſue ſir THOMAS DACRE, knight, his eldeſt ſon, who dyed in his father's life time. who had iſſue JOAN, his daughter and heir, married to ſir RICHARD FIENES, who, in her right, was lord Dacre of the ſouth, and of them are deſcended the reſt of that noble family, which the fryers of Lanercoſt made no mention of, for that they lived cloſe by the heirs males in the north, and reſpected them as their only patrons.

A declaration how the ſtate and dignity of a baron of this realm, which GREGORY lord Dacre, late deceaſed without iſſue, held and enjoyed, is now in right deſcended unto MARGARET, the wife of SAMPSON LENNARD, his ſiſter and next heir.

THIS ſtate and dignity did anciently, in the time of HENRY II. belong unto one HUBERT DE VAUX, as by an ancient book of the monaſtry of Lanercoſt doth appear, but how he came by it, by writ or otherwiſe, being ſo ancient it doth not appear.

HUBERT DE VAUX, the fifth baron of that name, in the time of HENRY III. had iſſue MAUD, his daughter and ſole heir.

THOMAS MOULTON married with her, and was accepted to be a baron of the realm in her right; for his iſſue by her enjoyed place in parliament, and elſewhere, of an ancient baron, and before divers other ancient barons, as by records doth appear.

After three deſcents in the bloud of the MOULTONS, this dignity deſcended unto MARGARET, daughter and heir of THOMAS MOULTON, the eighth baron from the firſt HUBERT DE VAUX.

RANULPH DACRE marrying with her, in the time of EDW. II, was likewiſe accepted to be a baron of the realm in her right; for he likewiſe, and his iſſue by her, enjoyed the place in parliament, and elſewhere, which MOULTON held, and VAUX before him.

After four deſcents in the blood and name of the DACRES, this ſtate and dignity deſcended unto JOAN, couſin, and next heir to THOMAS DACRE lord Dacre.

Sir RICHARD FYNES marrying with her, in the time of HEN. VI, was likewiſe accepted to be a baron of the realm in her right, and not otherwiſe.

This hath ſome evident demonſtrations:

1. Firſt, The letters patents of 37. HEN. VI. wherein the King, in the preface of the ſame, affirmeth preciſely, that THOMAS DACRE, her grandfather, whoſe heir ſhe was, held the ſame ſtate and dignity, to him, and to his heirs general, not reſtraining the ſame to his heirs males, or otherwiſe.

Alſo he ſaith therein expreſly, That JOAN was his couſin and next heir, and that in conſideration thereof, without expreſſing any other conſideration of ſervice, or otherwiſe, he did accept, declare, and repute, him, the ſaid ſir RICHARD FYNES, to be lord Dacres, and one of the barons of the realme.

Theſe letters patents have no words of creation.

2. Secondly, For that this ſir RICHARD FYNES, without any other warrant, did, from the beginning of the reign of king EDW. IV. enjoy the place and prehemineence in parliament, and other where, which the lords DACRE, MOULTON, and VAUX, before him did hold, and was called lord Dacre.

3. Thirdly, It appears plainly by the award of king EDW. IV, made in the thirteenth year of his reign, between the ſaid lord Dacre and ſir HUMPHREY DACRE, knt. then next heir male of that blood, when controverſie grew between them concerning the DACRES lands.

In that award, the King, in the preface, termeth the ſaid ſir RICHARD FIENES, knt. by the name of lord Dacre, whereas he termeth ſir HUMPHREY DACRE only by the name of a knight, ſo as it appeareth that that King did alſo accept ſir RICHARD FIENES formerly for a baron.

In the body of the ſaid award, the King doth expreſly award, that the ſaid ſir RICHARD FYNES, in the right of JOAN his wife, be reputed, had, named, and called, lord Dacre; and that he keep the ſeat and place in parliament of THOMAS lord Dacre: And moreover, that the heirs of the body of the ſaid JOAN be likewiſe ſo reputed, had, named, and called, and they to keep the ſame ſeat and place, which is ſpecially to be noted that he linketh the dignity to the iſſue of the body of JOAN, and not to the iſſue of the body of ſir RICHARD FINES, her husband; ſo as the iſſue of her body by any other husband, might as well have enjoyed that dignity, but no iſſue of the body of FINES, by any other wife. And in like manner to be noted, that the limitation is not to the heirs males of her body, but to the heirs general of her body, including females as well as males.

But on the other ſide, he gave unto ſir HUMPHREY DACRE the name of lord Dacre of Gilleſland, and limited that dignity to him, and to the heirs males of the body of THOMAS lord Dacre, and they to have the next place in parliament beneath the place which the ſaid ſir RICHARD FINES lord Dacre, then occupied, and had in parliament.

And it ſeemeth that the reaſon why the King did limit the dignity which was deſcended unto JOAN, to the iſſue of her body, and no further, was becauſe ſir HUMPHREY DACRE was then her next heir collateral; and ſhe dying without iſſue, the ſaid ancient dignity was, by the laws of this realm, to fall upon him and his iſſue: So as it is plain in our underſtanding, that the award, in reſpect of JOAN, was a declaration, explanation, and confirmation of her former right unto the ſaid dignity.

Fourthly, If it be taken, that the award of king EDW. IV. did create a new dignity in JOAN, and in the iſſue of her body, then it is plain, that it pleaſed that King expreſly to allow of females, in this caſe, as well as of males, to bear this dignity.

And therefore this ſtate and dignity, after divers deſcents, falling lineally from the ſaid JOAN to GREGORY lord Dacre, the 17th baron from the firſt HUBERT DE VAUX, and he dying without iſſue of his body, and the ſaid MARGARET, the late petitioner, being his ſiſter and ſole and next heir, and likewiſe lineally deſcended from the ſaid JOAN, it ſeemeth to be clear, that the ſame dignity is deſcended unto her, and to be allowed unto her.

Laſtly, The Queen's moſt excellent Majeſty having heretofore, of her gracious favour, referred the conſideration of this claim unto the late right honourable commiſſioners for marſhal cauſes, the lord high treaſurer of England, late deceaſed, and the lord high admiral of England, now living, they have adviſedly, upon deliberate conſideration had of the ſame, declared and certified their opinions for, and in the behalf of the ſaid MARGARET.

Certain other precedents*, beſides thoſe that are inſerted in the beginning of this book, declaring that the heirs females of barons, have enjoyed the dignities of their anceſtors, and being married, that their husbands, in regard thereof, have been ſummoned and called likewiſe to parliament, and to have continued that dignity to their next heirs.

WILLIAM the Conqueror.

JOHN TALBOT, a Norman, came into England with WILLIAM the Conqueror, and married MAUD, daughter and heir of RICHARD lord Talbot of Longehope in England, in whoſe right the ſaid JOHN was lord Talbot of Longehope; of whom the earl of Shrewsbury is deſcended.

* Though theſe precedents, except in ſome few particulars, are much the ſame with thoſe under the barony of Willoughby, and might look like repetition; yet, as there is ſome little difference, and being from another copy, for the ſake of the curious, we thought proper not to omit them.

WILLIAM

WILLIAM RUFUS.

EUSTACE FITZ JOHN, the ſon of JOHN MONOCULUS, lord of Knaresborough, married BEATRIX, daughter and heir of IVO lord Veſcy, in whoſe right the ſaid EUSTACE was lord Veſcy; of whom the earl of Cumberland is deſcended, and writeth himſelf lord Veſcy.

HENRY the firſt.

JOCELINE, ſon and heir to the duke of Brabant, married AGNES, daughter and heir to WILLIAM lord Percy, in whoſe right he was lord Percy; who, for the love of the lady his wife, cauſed his children to be called PERCIES; of whom is deſcended the earl of Northumberland.

King STEPHEN.

MAURICE FITZ HARDING, married ALICE, daughter and heir of ROBERT lord Berkley, in whoſe right he was lord Berkley; of whom is deſcended the lord Berkley that now liveth.

HENRY the ſecond.

JOHN MOULTON, knt. married MAUD, daughter and heir of WILLIAM MESCHINES lord Egremond, in whoſe right he was lord Egremont, whoſe heir general was married to the lord Fitzwalter, of whom is deſcended the earl of Suſſex that now liveth, and writeth himſelf lord Egremont.

RICHARD the firſt.

ADAM DE PORT, lord of Baſing, married ISABEL, daughter and heir of ROBERT, lord Haya of Halua, in whoſe right he was lord Haya of Halua; of whom deſcended the lord ST. JOHN of Baſing, anceſtor to the marquis of Wincheſter.

King JOHN.

JOHN DE PLACETIS, married ALICE, daughter and heir of WALLERAN, earl of Warwick, in whoſe right he was earl of Warwick: He, the ſaid JOHN, died without iſſue, after whoſe death the ſaid counteſs of Warwick was married to WILLIAM MAUDUIT, baron of Hanſlap, who alſo was earl of Warwick in her right.

HENRY the third.

HENRY HASTINGS, knt. married JOAN, daughter and heir of WILLIAM CANTELUPE, lord of Bergaveny, in whoſe right he was lord Bergaveny, of whom deſcended LAURENCE HASTINGS lord Bergaveny, and after created earl of Pembroke in EDWARD III's time.

EDWARD the firſt.

ROGER lord Clifford, married ISABEL, daughter and heir of ROBERT VIPOUNT, lord of Weſtmerland, in whoſe right he was lord of Weſtmerland; of whom is deſcended the earl of Cumberland now living.

EDWARD the ſecond.

Sir JOHN CHARLTON, knt. married HAWYSE, daughter and heir of OWEN AP GRIFFITH, lord of Powis, in whoſe right he was lord Powis.

EDWARD the third.

JOHN FITZ-ALAN, ſecond ſon to RICHARD earl of Arundell, married MARY, daughter and heir of JOHN lord Maltravers, in whoſe right he was lord Maltravers; of whom is deſcended the earl of Arundell now living.

RICHARD the ſecond.

Sir WARREN GERARD, knt. married ISABELL, daughter and heir to JOHN lord Liſle, in whoſe right he was lord Liſle; of whom are deſcended the earls of Warwick and Leiceſter, and the lord Liſle now living, with others.

HENRY the fourth.

Sir WILLIAM LOVELL, knt. married ELEANOR, daughter and heir to JOHN lord Morley, in whoſe right he was lord Morley; of whom is deſcended the lord Morley that now liveth.

HENRY the fifth.

JOHN TUCHETT married JOAN, daughter and heir of NICHOLAS lord Audley, in whoſe right he was lord Audley; of whom is deſcended the lord Audley that now liveth.

HENRY the ſixth.

WILLIAM BOURCHIER, third ſon to WILLIAM BOURCHIER, earl of Ewe, married MARGARET, daughter and heir of RICHARD lord Berners, in whoſe right he was lord Berners.

EDWARD the fourth.

EDWARD GREY, knt. married ELIZABETH, daughter and heir of JOHN TALBOT viſcount Liſle, in whoſe right he was viſcount Liſle.

HENRY the ſeventh.

GEORGE lord Stanley, ſon and heir to THOMAS earl of Derby, married JOAN, daughter and heir of JOHN lord Strange of Knockin, in whoſe right he was lord Strange; of whom is deſcended the lord Strange that now liveth.

CHARLES SOMERSET, natural ſon to EDMUND duke of Somerſet, married ELIZABETH, daughter and heir of WILLIAM HERBERT lord Herbert, &c. who in her right was lord Herbert, and ſo ſummoned to the parliament, the ſeventh year of king HENRY VII.

The names of divers perſons taken out of infinite number within other realmes who, in the right of their wives, have enjoyed all manner of noble and princely titles and ſtiles.

OTHELIN earl of Burgogne, was, in the right of his wife, earl of Artois: PHILIP the Long, in the right of JANE, daughter of the aforenamed OTHELIN, was earl of Burgoine.

HENRY II. king of England, was, in the right of ELEANOR his wife, duke of Guyen and earl of Poictou.

EUDO duke of Burgoine, was, in the right of JANE his wife, daughter and heir to PHILIP the Long and JANE his wife, earl of Burgoigne and Artois.

WILLIAM GODFRAY, in the right of his wife, was earl of Tholouſe.

ARCHENBALT CAPDAN was earl of Foix, in the right of ISABEL his wife, ſiſter and heir of MATTHEW CASTLEBAN.

PHILIP le Grand, earl of Flanders, was, in the right of ELIZABETH his wife, earl of Vermandois.

BALDWIN earl of Heynault, in the right of MARGARET his wife, ſiſter and heir to earl PHILIP, was earl of Flanders.

FERDINAND, ſon of SANCTIUS king of Portugal, in the right of JANE his wife, was earl of Flanders.

THOMAS of Savoy, ſecond husband to the ſaid JANE, was, in her right, (although he had no iſſue by her) earl of Flanders.

GUILLAM DE DAMPIERRE, was, in the right of MARGARET his wife, ſiſter and heir to the aforenamed JANE, earl of Flanders.

MAXIMILIAN, archduke of Auſtria, before he was elected Emperor, was, in the right of MARY his wife, the heir general of CHARLES duke of Burgoine, and of ISABEL of Burbon, duke of Burgoine, of Lotrich, of Brabant, of Limburgh, Luxemburgh, earl of Flanders, Artois, Burgoine, Henault, Holland, Zealand, Namur, lord of Salignes and Malignes.

PHILIP of Burgoigne, by BONA his wife, was earl of Ewe.

GODFREY duke of Boüillon, in the right of MAUD his wife, was ſoveraign lord of Hetruria, marquis of Antona, Piſa and Lucques.

HUGH, ſon of HENRY I. king of France, was, in the right of his wife, earl of Vermandois, and RALPH his ſon, was, by his mother, earl after him.

PETER earl of Alençon, in the right of MAUD his wife, was earl of Blois.

HUGH earl of St. Paul, by the right of MARY his wife, was earl of Blois, and JOHN their ſon, by deſcent from his mother, earl of Blois.

HUMBRET, ſurnamed BLANCHMAINS, earl of Bretaigne, and ſo was GEFFERY PLANTAGENET, in the right of CONSTANCE his wife.

GUY earl of St. Paul, was alſo, in the right of his wife, earl of Nevers, and ſo was ADOLPH duke of Cleve, earl of Nevers by his wife.

CHARLES II. of France, was, in the right of SUSAN his wife, duke of Burbon, Auvergne, earl of Clermont, of the Foreſts, of March, viſcount of Carlett and Marott, lord of Beamolois, pair and chamberlain of France.

EMANUEL PHILIBERT, late duke of Savoy, in the right of his wife was duke of Berry.

The late Prince of Orange, was, by his wife, earl of Bueren, and their ſon now earl by his mother.

Now paſſing over theſe foreign titles of honour poſſeſſed by husbands, in the right of their wives, we will deſcend again into our own country affairs.

IMmediately after the death of WILLIAM lord Willughby, the lady, his ſole daughter and heir, enjoyed the title and ſtile of lady Willughby, deſcended to her from her father, at which time ſir CHRISTOPHER WILLOUGHBY, knt. younger ſon of lord CHRISTOPHER, and brother to the lord WILLIAM, claimed the dignity as heir male, and the claim being heard by the lord Cardinal, the title was adjudged to the lady CATHERINE, late dutcheſs of Suffolk.

Alſo ſir WILLIAM WILLOUGHBY, knt. ſon to ſir CHRISTOPHER, when he was to be created baron, ſhewed to be created lord WILLOUGHBY of Willoughby and Eresby, which was denied him, for that both the baronies and the titles were the inheritance of the lady CATHERINE, and therefore he was created lord of Parham.

Object. Some have objected, That a baron is to be a counſellor in the weightieſt cauſes of the realm, and to ſit with the Prince in the higheſt court of parliament, an office and place unfit for women.

Anſwer. It repugneth to law and reaſon, that a baroneſs ſhould be deprived of her dignity, which is parcel of her inheritance, becauſe ſhe is unfit for parliament, even as an infant King is not to be depoſed for his infancy; the law hath better conſideration both for the one and the other; for the King's infancy, by the ripe act of councellors, and the woman's ſex, by her husband's, is to be ſupplied, and of this there are many examples.

Firſt, the law permitteth women to hold their lands by knights ſervice and grand ſergeanty, offices for that ſex more unapt then place in a conſultation-houſe, for wiſdome by nature is not ſo much denyed them, as ability to perform thoſe martial ſervices; but the law conſidering that theſe ſervices may be done by their husbands, as tenants in their wives right, reſteth ſo ſatisfied.

It remaineth on record, that JOHN of Gaunt, in the right of BLANCH his wife, was lord ſteward of England, and by expreſs words claimed the exerciſe of that office at the coronation of king RICHARD II. as then being tenant by the courteſy of England of his wife's inheritance, and was received. And at the ſame time JOHN DIMOCK claimed likewiſe, as tenant by the curteſe of England, to be the King's champion, and was admitted; and then alſo MARGARET counteſs of Norfolk, daughter and heir of THOMAS of Brotherton, late earl of Norfolk, claimed to be counteſs marſhal of England, as parcel of her inheritance to her deſcended, and prayed licenſe to exerciſe the office by deputation.

By theſe arguments it is manifeſt, that the husband is by law appointed to performe the ſervices due by the wife, therefore every reaſon to the contrary is againſt the law, yea, and injurious to the ſtate and lords of the fee; for it is more beneficial for the common-wealth, that he which hath a barony, in the right of his wife, ſhould rather adorn the realm with it, then live obſcurely, and who holdeth opinion that creation of new barons is neceſſary, he muſt confeſs, that not to retain the ancient, is againſt all good policy, for the greater the number of the nobility is, the greater is the honour of the Prince, and the greater the ſervice of the commonweale.

Sir EDWARD NEVIL, ſeventh ſon of RALPH NEVIL earl of Weſtmerland, was lord of Bergaveny, in the right of his wife, and ſo took his place; for if any will ſay he was not in the right of his wife, but by writ, which is eaſily to be proved falſe, then his place ſhould be inferiour to all of that time. If any will object that the baron newly created ought to poſſeſs the place of the laſt deceaſed, common reaſon and uſage to the contrary confuteth him. Object.

Likewiſe RICHARD WELLES, RICHARD HASTINGS, CHRISTOPHER lord Willoughby, and WILLIAM lord Willoughby were not created by writ, becauſe they took their places after the antiquities of the baronies of Willughby and Eresby.

Some relying on the civilians affirm, that women are not capable of baronies, and all higher dignities, in their own right; therefore neither their husbands, nor their children, can claim from them, that right which they could not have.

Albeit for the moſt part, the manner of trials in queſtions of nobility and chivalry have not been by juries, after the courſe of the common law, but by depoſitions and proofs, after the manner of the civil law; and therefore the conſtable and marſhal of England have uſed to cauſe divers doctors to aſſiſt them, yet always the iſſues ought to relye upon the cuſtoms of chivalry uſed within the realm, which cuſtom is alſo conſonant with that of France, Spain, and other dominions, where women are capable of feodals, that the husbands, in the right of their wives, poſſeſs their feodals, dignities, titles and ſtiles. Anſwer.

That cuſtom is a ſufficient, yea, and the chiefeſt rule to determine this queſtion, is to be proved by the common principle, *Conſuetudo in unaquaque regione eſt omnium dignitatum & juriſdictionum origo, forma & principium.* And by BALD. *C. conſuetudini ſtandum eſt diſponenti de nobilitate, conſuetudines loci faciunt nobilem, qui alias non eſſet nobilis.*

And to this effect for Spain, JOHN DE OTALARA uſeth theſe words, *Cauſæ nobilitatis ſunt mere peculiares noſtræ Hiſpaniæ, & quodammodo ſunt anomalæ, ideo non ſunt proprie determinari, per leges Romanorum, ſed de jure noſtro, &c.* The form of Roman nobility with that of our time, cannot be confirmed, it is ridiculous how ſome groſs-headed civilians ſweat by violent interpretations to work it, but all in vain.

In ancient time the patricians and ſenators (of which conſuls and prætors were choſen) were the only nobility in Rome, and that nobility deſcended from the father, as well to the children female as male, and both ſexes were eſteemed of the ſame degree of nobility, that their elders held, *uſque ad pronepotem*; ſo that theſe laws barring women from dignity, are to be underſtood of dignity, with adminiſtration, not of birth and marriage. And here you ſee a ſtop in deſcent, contrary to our cuſtomes; and as the cuſtomes of England always deſcented greatly from the Romans; ſo at this day Rome, and Italy itſelf, differeth as

wide as heaven from earth from their firſt form, cuſtomes and rites of nobilitie and dignity: For in thoſe in title of duke and earl, denoted an office and dignity in camp, and that of earl was abaſed to baſe offices, as of metals, granaries and works; and the title of baron was not yet hatched, and therefore not to be directed by thoſe laws.

Sithence the tranſlation of the empire, thoſe dignities of office, are become dignities of patrimony, and in divers places the dignities annexed with the patrimony. Therefore thoſe provinces which allow women to ſucceed in feodals, and in their parents patrimonies, as in dukedomes, earldomes, baronies, which are greater things to poſſeſs then the bare titles and names of them, granting the more by congruity, yeilded to them the leſs, and ſo the ſtiles of dignities are become parcel of inheritance and patrimony, and may not be taken by the Prince from them, no more then any other inheritance, but by way of forfeiture, eſcheat or extinguiſhment.

Of this latter form of nobility and dignity, the doctors determine that if it be *conjuncta feodo*, it deſcendeth to whom the fee deſcendeth; if it be *ſeparata à feodo*, then it deſcendeth after the cuſtome and manner of every province and region.

But foraſmuch as our caſe ſpecially is for the title of a barony, a dignity never in uſe among the old Romans, and therefore out of their rules, it is expedient to ſearch out the original of that dignity; for by all reaſonable conjectures, barons ſeem to have been the chiefeſt captains of people, ſeeking habitation or conqueſt, which have divided the country ſought by them, among themſelves, every man having juriſdiction within his own territory, and lived together in that quality of dignity, either under an head, or without a head; and in all kingdomes well governed, there have been always certain (as it were pillars of the ſtate, for councel, government, aſſiſtance) which were for the moſt part equal in authority, and therefore termed *pares regni*, *pares homines*, and ſhortly *parhomes*, and by converſion of P into B *barones*, for theſe two letters are often changed one into the other, as purſe of burſe, a libard for a leopard.

Such as the Italians call *barone*, the French *barons*, and wee *lords*, the Dutch term *free heres*, which ſoundeth with us free lords, as having free territories and juriſdiction within the ſame, whereof our court baronies are a lively repreſentation; but from whence our word *lord* ſhould have his offspring is more doubtful, yet by moſt reaſonable and neareſt conjecture, out of Burgundy; for there, in old time, a free territory was termed *alodium*, and the word to this day in part retained, and ſuch a poſſeſſor called *alodius*, with us a lord: Perſons of this degree (call them as you liſt) barons, freeheres, or lords, were ever in great veneration, eſpecially in France; and it is thought by men of greateſt judgment, that JULIUS CÆSAR, in his commentaries, by the word *regulus*, meant the baronies of France, where, at this day, ſome barons contend by antiquity of their baronies to have place above new earls.

CHOPPINUS.

In this realm all earldomes and baronies before the conqueſt, were inheritances in fee ſimple, and deſcended to females, as well as to males, and the dignities were annexed to fees; for tail is but a latter invention, and not many before EDWARD III's time of the higheſt and princely dignities were entailed.

This ground well conſidered, there was no cauſe to ſeclude women in ancient time from ſucceſſion in earldomes and baronies, becauſe they are no parliament perſons, for earls and barons were many years before any parliament in this realm, ſpecially in ſuch ſolemn order, as is now obſerved, of three eſtates, which, by common opinion, was firſt introduced by HENRY III. therefore they erre that make parliament the firſt maker of baronies, when barons are rather the firſt makers of parliament.

The Conqueror, at his entry, ſuffered divers of thoſe ancient baronies to remain as he found them; ſome he gave entirely to his own nobility, ſome to religious houſes, the dignity abiding inſeparate from the fee, with ſo ſtrong conjunction, that biſhops and abbots thereby received with the baronies, the dignity

and

and ſtile of lords, otherwiſe being incapable of thoſe ſecular ſtiles by the bare dignity of an abbot or prior: For abbots and priors, not endued with baronies, neither uſed the ſtile of lord, nor were ſummoned to parliament, as the words in the ſtatute, 15. EDW. III, expreſs, how in reſpect only of their baronies, abbots and priors owe ſervice in parliament.

But I have ſeen ancient tranſcripts of writts of parliament, which had the word *baroni* in their direction, as, *Rex, &c.* JOHANNI *baroni de Greyſtock*, EDMUNDO *baroni Stafford*, contrary to the form now obſerved, which I preſume was uſed for a diſtinction between old and new barons; for in writs of creation, that is to ſay, of firſt ſummons, the King writeth, *Rex, &c.* JOHANNI STRANGE *de Knockin, militi*, naming the mannor which ſhall always afterwards ſtand for the head place of the barony, and whereof the baron, and his heirs, ſhall be ſurnamed: And for the change of form, thus much may be alledged, as perfection of parliament commenced in HENRY III.'s days, ſo in his time almoſt all the ancient barons were conſumed, partly by tranſlating of them to higher degrees, but eſpecially by the barons warrs, which began about the 46th year of his reign; ſo by decay of old, and by plenty of new creations, the writs of creation grew to be a precedent of ſummons, as well for the one as the other, the like hath happened in divers other writs.

But that there was once ſuch diverſity of writts, I am not only perſwaded by the ſight of the tranſcripts, but confirmed by the records of inſtitution, and order of parliament, declaring how that every earl and baron ought to come to parliament, and alſo their paires (or as we commonly call them, peers) which words make a plain diſtinction between barons already created, and their peers, which are to receive creation: Then an earl's peer is deſcribed to be ſuch a perſon as poſſeſſeth twenty knights fees, and a baron's peer, which hath thirteen knights fees, and one third part, in which ordinance we rightly follow the ſteps of the Romans; for after their government grew to perfection, none among them were promoted to dignities, but thoſe whoſe ſubſtance was anſwerable to the value aſſeſſed, for the capacity of that dignity.

Likewiſe the new barons called by writ reſemble thoſe which of the Romans were named *patres conſcripti*, and the elder barons repreſent the old ſenators. After the ſame manner in France, ſometime none might be a baron but he that had four caſtellains under him, and founded one hoſpital, or a college with an authentick ſeal.

Now concerning the ſtate collated by writt, they are very farr from knowledge of cuſtomes and laws of chivalry, which affirm, that the dignity of a baron, created by writ, deſcendeth not to his heir, and that his heir may not uſe the name nor vocation, until he alſo be called by writ, and that then it becometh an inheritance; whereunto I anſwer, That if the dignity be extinct in the father by natural death, then the ſon indeed needeth a new creation; but now by what reaſon ſhall a new writ of creation work a greater virtue of inheritance in the ſon then it did afore in the father. But by the civil law, and all laws at this day, where dukes, earls, and barons, poſſeſs dukedomes, earldomes, and baronies, the dignities are *res patrimoniales*; and eſpecially that of a barony ever hath been, and ought to be heretable; for it muſt be confeſſed, becauſe it cannot be denied, that the principal foundation and cauſe of barons creation is for the ſervice which he that is created, and his heirs, are bound to do to the realm and Prince as a baron, and are able to perform by their poſſeſſions liable to that vocation. And it ſhould be great injury to the crown and regal ſtate, having, from the beginning, with diminution of it ſelf, departed with ſo many baronies to ſubjects to want the honour and ſervice reciprocally due: Alſo it is greater detriment to the parliament and realm to lack a member, in every reſpect compleat for ſervice, then to the heir of the baron, or husband of the baroneſs, to ſit quietly at home unſummoned. Envy and diſdain may allow of this policy, but law and reaſon will never yeild to it; the civil law rather rejecteth and unnobleth a nobleman (a hard caſe) by poverty

unable to ſerve, then omitteth the uſe and ſervice of a man by law and nature ſufficiently qualified; and CASSANEUS writeth this ſentence, *Si illud ex quo cauſatur nobilitas tranſiit ad poſteros, ut regnum, ducatus, comitatus, &c. tunc in infinitum erit ille nobilis, ad quem tranſiit ipſa nobilitatis cauſa.*

Tit. præſcript. 3. HEN. VIII. The care of the law was, in BRACTON's time, greater for the conſervation of baronies, for the head mannor of a barony (if there were ſufficient beſides) could not be diſmembred by dower, for that it was the continuance of the baron, and the law was, and I know no cauſe why it ſhould not be ſo ſtill, that if the King's baron having none iſſue but daughters, and all the eldeſt provided for, and beſtowed in marriage in his life, ſhould dye, leaving the youngeſt unmarried, the King may diſpoſe ſuch a daughter in marriage to any of his knights, and ſhe and her husband ſhall enjoy the whole barony and dignity, and the reſt have nothing.

By the civil law, if the Emperor ſignifieth his bare pleaſure, that he will have any perſon to be a gentleman, which is none, without mention of his heirs, yet that quality ſhall be interpreted to reach to his children; *Quia nobilitas politica eſt hereditaria.* Then it is a very hard conſtruction, to make the heir of a new created baron of worſe condition then the heir of a new gentleman.

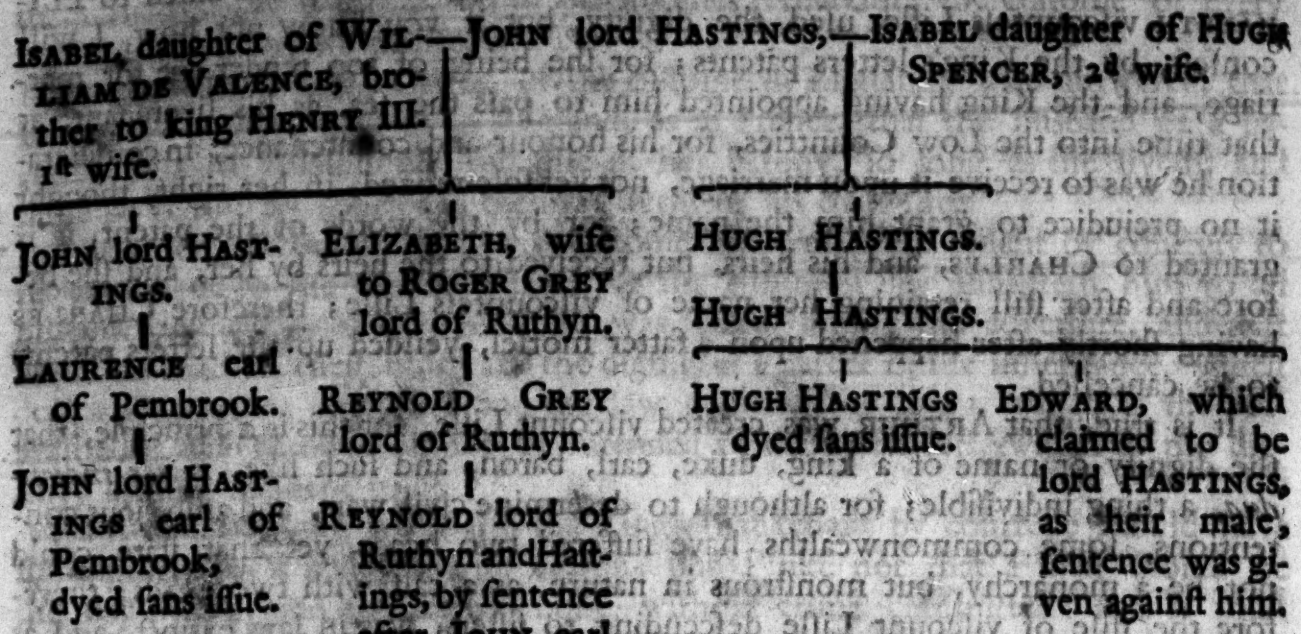
Now for the capacity of women, in their own right, to be ducheſſes, counteſſes, baroneſſes, and their husbands, in their wives right, and that women may tranſmit ſuch right to their heirs, albeit by arguments and examples before recited, it be ſufficiently proved; yet, to drive the nail home to the head, I will ſhew you the whole proceſs judicially debated between EDWARD HASTINGS, claiming the armes and ſtile of baron Haſtings, as heir male, and the lord GREY of Ruthyn, claiming the ſame as heir general from the woman, and ſentence given with the lord GREY, under the ſeal of the office; and in that proceſs it is proved and confeſſed, that armes and ſtiles are things inheritable. The like judgment, in the like caſe, was given between the lord LOVELL and the lord MORLEY for BURNELLS arms.

See the Pedigree below.

Do not you think that king HENRY VIII, and all his council were perſuaded that women are capable of dukedomes, earldomes, and baronies, when, by his letters patents, he created queen ELIZABETH's mother, marchioneſs of Pembroke; and, in caſe ſhe had married a ſubject, and by him had iſſue a ſon, ſhould not the ſon, by deſcent from her, have been marquis of Pembroke? yes verily; then if this be undoubtedly true, the contrary is undoubtedly falſe.

But I will obtrude a right learned civilian's ſentence againſt you: *In beneficialibus ratione nobilitatis, ſpectatur genus maternum, & ita judicatum fuit per rotam.* CONANUS writeth, that his neighbours the Campaignans draw their nobility only from their mother. Likewiſe PLUTARCH ſaith, that the Xanthiens derive their names, their condition, family, and pedigree, from their mothers, and not from their fathers. By ULPIAN, ſo do the *Ilienſes, Delphici, & Pontici*; ſo that nobility in the mother, and from the mother, is not *rara avis*, although ſome Roman law will not ſo liberally allow of it, as other regions; yet PAULUS, a man of that profeſſion, ſuppoſeth that women in Rome, were not admitted to certain preheminences allowed in other countries, rather becauſe the cuſtom was to the contrary then law, for in Greece they gave ſuffrages; and ACCOURSIUS, upon the text forbidding women to be arbitrours, addeth this exception, unleſs they have had that right by long cuſtome: Alſo INNOCENTIUS III. a Roman biſhop, to whoſe cenſure all their laws bow, in an epiſtle willeth, That the awards made by the French Queen ſhould be obſerved, for that (by approved cuſtome, which is to be received as law) noble women in France have ordinary juriſdiction over their ſubjects, whereunto PANORMITANUS addeth, that women having ſuch right by inheritance, need no authority of cuſtome.

Pedigree for JOHN lord HASTINGS.



To be ſhort, if we ſhall admit the opinion ſurmiſed of the civilians, that dignities deſcend not from women, our moſt antient earls muſt relinquiſh and cancel many of their titles, which they and their anceſtors have ever lawfully uſed, as deſcended to them, ſithen they were created earls; ſo that by writ they could not receive them, which only containeth the princely dignities, and patents they have none, as the earls of Arundel write themſelves lord Maltravers; the earls of Oxford, lord Bulbeck, Badleſmere and Scales; the lord marquis Dorſet, lord Ferrers of Groby, Bonvile, Harrington, and Aſtley; alſo ſome baronies have had two baronies at once deſcended to them, as the earl of Lincoln, had Clinton and Say, and in the writ, the form is but to put one of them, then the other muſt quail; therefore if you will condemn their claim from women, you offer them great wrong; but foraſmuch as they enjoy them by great right, this queſtion both by law and uſe is determined.

By the law of England, and not of Rome, abbots and priors in reſpect of their baronies, have the titles of lords, and place in parliament, which otherwiſe, by the dignity of abbot or prior they may not uſe; and yet ſuch abbot poſſeſſeth the barony, not in his own right, but in the right of the abbey; and ſhall not a layman tenant of a barony, in the right of his wife, or by curteſie of England, have like priviledge in the like caſe? for the law in many things reſembleth their condition ſomewhat like, and ſo for the ſon of the baroneſs the right is ſtronger, then for the abbot's ſucceſſor, for that the ſon ſhall poſſeſs the barony in his own right.

It hath been objected by ſome, that there were late examples to the contrary; namely,

ARTHUR PLANTAGINET was created lord Liſle, and had not the dignity by his wife, although ſhe were the heir.

And ſir JOHN DUDLEY, knt. was likewiſe created lord Liſle, albeit he was ſon and heir of the lady Liſle.

Alſo one Mr. WIMBISH, husband to the baroneſs Talboys, enjoyed not the title in her right.

It is anſwered, that more examples, even in that houſe of Liſle, might be gathered to the contrary then thoſe two; for in RICHARD II.'s time, ſir WARINE GERARD was lord Liſle, by ISABEL his wife, daughter and heir to JOHN lord Liſle.

JOHN TALBOT was likewiſe lord Liſle, in the right of his wife.

EDWARD GREY, by marriage of ELIZABETH, daughter and heir of the ſaid JOHN TALBOT, was lord Liſle.

Sir CHARLES BRANDON, afterward duke of Suffolk, being but affied to ELIZABETH viſcounteſs Liſle, uſed the dignity, but if you know not how, I will confeſs, by the King's letters patents; for ſhe being of too tender age for marriage, and the King having appointed him to paſs the ſea, as his lieutenant, at that time into the Low Countries, for his honour and countenance, in conſideration he was to receive it upon marriage, not yet ſolemnized, in her right, thought it no prejudice to grant him the name; for by the words of the patent, it is granted to CHARLES, and his heirs, but received to the heirs by her, and ſhe before and after ſtill retaining her name of viſcounteſs Liſle; therefore CHARLES having ſhortly after happened upon a fatter morſel, yeilded up the letters patents to be cancelled.

It is true, that ARTHUR was created viſcount Liſle, for this is a principle, that the dignity or name of a king, duke, earl, baron, and ſuch like, is *res individua*, a thing indiviſible; for although to determine civil wars, and ambitious contentions, ſome commonwealths have ſuffered two heads, yet that ſtate could not be a monarchy, but monſtrous in nature, as a calf with two heads; therefore the ſtile of viſcount Liſle deſcending to ſiſters, was in law extinct, and at the Prince's diſpoſition, as by this pedigree may appear; and the ſtile was granted to ARTHUR, and to his heirs males of ELIZABETH's body, which to ſir JOHN DUDLEY was not, therefore he needed creation.

Viſcount Liſle.

EDWARD GREY, viſcount Liſle by ELIZABETH his wife, daughter and heir of JOHN TALBOT viſcount Liſle, ſecond ſon to the earl of Shrewſbury, who, in the right of his mother, was viſcount Liſle.

ANNE wife to JOHN WILLOUGHBY.	JOHN GREY viſcount Liſle.	ELIZABETH wife to EDMUND DUDLEY.	MARGARET married to the earl of Wiltſhire.
	ELIZABETH vicecounteſs Liſle, affied to CHARLES BRANDON, but married to HENRY earl of Devonſhire, but dyed without iſſue.		

But roundly to confeſs truth, examples be not ſo ſtrong for viſcounts, becauſe they be of latter ſtamp, and have their creations by patent, with an annuity: As for barons, which is the cauſe we maintain; for Mr. WIMBISH's caſe king HENRY VIII. cauſed to come before him, the two chief juſtices, doctor GARDINER, who was biſhop of Wincheſter, and Garter, principal king of armes, who then was otherwiſe called BARKER.

Firſt, The King demanded of the chief juſtices, whether by law Mr. WIMBISH ought to have the name of lord Talbois, in the right of his wife?

They anſwered, that the common law dealeth little with the titles and cuſtomes of chivalry, but ſuch queſtions have always been decided before the conſtables and marſhals of England. Then the King moved the queſtion to Dr. GARDINER, who anſwered, by the law he profeſſed, dignity was denied both to women and to Jews.

I like not that law, quoth the King, that putteth Chriſtian women and Jews in one predicament.

That law, ſaith Dr. GARDINER, as I take it, is to be intended of dignity whereunto publick office is annexed: For in France, women ſucceed as well to their anceſtors in dignities, as in patrimonies; therefore the cuſtome of every region is to rule thoſe things.

Then the King asked Garter, of the cuſtome in England; who anſwered, that it hath always been uſed ſo in England, as in France, that the husband of a baroneſs by birth, ſhould uſe the ſtile of her barony, ſo long as ſhe liveth, and if he be tenant by courteſie, then for term of his own life.

The chief juſtice confeſſeth, that cuſtome concerning the tenant by courteſy to be conſonant to the common law; for the common law admitteth him to all his wife's inheritances of which ſhe was ſeized, during the coverture, and that might deſcend to their iſſue, and the dignity is a parcel of the inheritance, which doctor GARDINER confeſſed, and the law granting the more, which is the poſſeſſion of the barony, cannot be intended to deny the leſs, which is the dignity, a thing incident to it.

As it ſtandeth with law (ſaith the King) that tenant by courteſie ſhould have the dignity, ſo it ſtandeth with reaſon; but I like not that a man ſhould be this day a lord, and to-morrow none, without crime committed; and it muſt ſo fall out in the husband of a baroneſs, if ſhe dye having had no child by him.

The chief juſtice affirmed, that in that point, the common law diſſented not much from the King's reaſon, for the husband that never had iſſue is thought to have no intereſt in law in his wife's inheritance, more than in reſpect only that he is a husband; but having a child, he hath acquired a ſtate in law, and is admitted to do homage, and not before.

The King moved this queſtion, If the crown of England ſhould deſcend to his daughter, whether her husband ſhould uſe the ſtile of England? the chief juſtice anſwered no, becauſe the crown of England is out of the law of courteſy, but if it were ſubject thereunto, then it were clear.

The King for reſolution ſaid, that foraſmuch as by their ſpeeches, he underſtood that there was no force of reaſon, nor law, to give the name to him that had no iſſue by his wife, that neither Mr. WIMBISH, nor any other from henceforth, ſhould uſe the ſtile of his wife's dignity, but ſuch as by the courteſie of England, hath alſo right to her poſſeſſions, for term of his life; to which opinion the perſons aforenamed applauded, and ſo the King's ſentence ſtood.

Reaſons to prove that dignities of honour, not otherwiſe reſtrained by the Prince's letters patents, be deſcendable to females as well as to males.

FIRST, that theſe dignities be inheritable, and that they have and do deſcend from heir to heir, the received opinion of all men, and the common experience of enjoying the ſame places which their anceſtors did in parliament, and otherwhere, and that without the Prince's ſpecial allowance, doth evidently evince.

Secondly, That the deſcents of all inheritable things whatſoever within this realm, are to be guided and carried according to the common laws of this realm, where neither ſtatute nor ſpecial cuſtom doth alter the ſame, is as plain, and not to be denied.

Thirdly, It is as plain, that by the common law of this realm, there was never any other eſtate of inheritance, allowed in any thing whatſoever, but ſuch as did fall to the female, as well as to the male, and a limitation to the heirs males generally, was never allowed in any caſe to be good, no not in the Prince's letters patents; and it ſeemeth that the ground of this law was the law of GOD, which doth allow of females, as well as of males, and the law of nations alſo.

Afterwards, in the thirteenth year of king EDWARD I. there was a ſtatute law made concerning conditional eſtates of inheritance, by the warrant and equity whereof (as it is ſaid) an entailing of land and other inheritances

unto iſſue males, excluding females, grew up, and hath ſince been commonly put in ure.

But in all thoſe limitations, whatſoever it ever was, and yet is ſpecially to be required, that in the gift it ſelf there be an expreſs verbal limitation to the iſſues, or heirs males, and alſo an expreſs nomination of the perſon, from whoſe body thoſe males ſhall be iſſuing.

Other ſtatute law, concerning the limitation of deſcent, there is none.

And as for cuſtome, there be divers cuſtomes in ſpecial places of this realm, ſomewhat varying from the courſe of deſcent, at the common law, but there was never yet any cuſtome known of, that abſolutely excluded females from deſcent.

And this deſcent of dignities, being not reſtrained to any certain precinct, but running through the whole land, cannot be ſaid to be a ſpecial cuſtome, nor yet any cuſtome to be imagined good, that hath not had ſolemn allowance in place of juſtice.

So as if it be admitted, as ſome may ſay, that the King's ſummons to parliament did anciently, and before the ſaid ſtatute of 13. EDW. I. create a nobleman, and give him an inheritance therein; it muſt needs be taken and expounded to be deſcendable to his heirs females, as well as to his heirs males, for in thoſe days, there was no other manner of deſcent.

And for ſuch creations by writ as have happened ſince the ſaid ſtatute of 13. EDW. I. ſeeing in the writ there is no ſpecial limitation to the iſſue males, it muſt needs be alſo taken to be a full inheritance in the party ſummoned, if any at all, and that according to the courſe of the common law, deſcendable both to male and female.

And for that which is ſaid, that it is no inheritance in the father until the ſon be alſo called by writ, it is but a weak imagination without good ground; for the law of this realm, that doth guide the Prince, as well as his ſubjects, in the validity of all grants, doth not allow of any ſuch creating of inheritances; and if it were ſo to be admitted, yet muſt the ſon then have a full inheritance therein deſcendable to females, as well as to males, for it is no way reſtrained by words to his iſſue male.

The three queſtions alſo which have been anciently made upon the deſcent of dignities to the iſſue female, do declare, that the law has been always taken, that they be deſcendable unto them.

1. The firſt, Whether by ſuch a deſcent, the husband may be ennobled alſo, and ſome other ſecondary queſtions ariſing thereupon.

2. The ſecond, Whether the brother of the half bloud ſhall be preferred before the ſiſter of the whole bloud?

3. The third, When the baron hath more daughters, or ſiſters, than one, to be his next heirs, what ſhall then become of the dignity?

The manifold precedents alſo of deſcents of dignities unto females, doth manifeſtly explain the law of the realm in this caſe.

The objection againſt the ſex might perhaps offer diſpute, if a new law by parliament were to be made, but to ſhake ſo ancient and ſettled a law of this realm without parliament, is no way to be admitted; and it is known that women have, and do execute high places of dignity: women have inherited offices of high conſtableſhip, high marſhalſhip, championſhip, and divers others, ſcarce compatible with their ſex: And the reaſon of this objection would diſable and diſinherit a baron, if he were an idiot, or *non compos mentis*, or an infant, as well as a woman; and who can deny, but that her Majeſty may create any lady of her court to be a baroneſs, in her own right, to her, and the heirs of her body; ſo as it is no inevitable argument to ſay, that ſhe cannot be of the parliament houſe, therefore ſhe cannot be a baroneſs. The ancient grant of the high conſtableſhip of England unto the earl of Oxford, was to him and his heires general, including females as well as males.

The few precedents that make ſome ſcruple in this caſe, are not to be regarded, for ſometimes will, ſometimes meer negligence, ſometimes miſtaking, ſometimes meer wrong, looſeth particular right; but none of theſe can change the common law of this realm, whereby we are to be ruled and governed, in caſe eſpecially where no ſuch interruption hath been, as in the caſe of MARGARET, the ſiſter and heir of GREGORY, late lord Dacre.

Placita coram Rege, anno 43. HEN. III.

THOMAS DE MOULTON attachiatus fuit ad reſpondend. priori de Lanercoſt de placito quare, &c. Et THOMAS venit & defendit vim & dicit quod revera eſt patronus prædicti prioratus ratione cujuſdam MATILDIS uxoris ſuæ, de cujus hæreditate, idem prioratus fundatus fuit.

This THOMAS aforeſaid, dyed ſeiſed of the moiety of the barony of Burgh upon the Sands, Kirk Oſwald, with other lands, the 55th of HENRY III, and THOMAS is his ſon and heir of full age. Eſcaetr. anno 55. HEN. III.

MATILDIS uxor dicti THOME ſenioris, obiit ſeſeita anno 21. EDW. I. de multis terris in diverſis comitatibus, & THOMAS filius THOMÆ DE MOULTON eſt hæres dictæ MATILDIS propinquior, ætatis 30 annorum, ipſa obiit die veneris primo poſt feſtum ſancti BARNABÆ. Eſcaetr. anno 21. EDW. I.

THOMAS DE MOULTON de Gilleſland, obiit ſeſeitus de manerio de Holbech in com. Lincolniæ, anno 21. EDW. I. & THOMAS eſt filius & hæres, ejus ætatis 26 annorum, obiit die Jovis in cœna Domini, ante matrem. Eſcaetr. anno 21. EDW. I.

THOMAS DE MOULTON de Gilleſland, obiit ſeſeitus de baronia de Gilleſland, anno 23. EDW. I. & THOMAS eſt filius & hæres, ejus ætatis 13 annorum. Eſcaetr. anno 23. EDW. I.

THOMAS DE MOULTON de Gilleſland, obiit anno 7. EDW. II. & MARGARETA filia dicti THOMÆ, & ejus hæres propinquior, ætatis annorum ..... ſummonitus ad parliamentum, anno 25. EDW. I. 28. EDW. I. 30. EDW. I. 32. EDW. I. anno 1. EDW. II. Eſcaetr. anno 7. EDW. II.

THOMAS DE MOULTON de Gilleſland, dat Regi 25 marcas de relevio de medietate medietatis baroniæ de Burgo, & Irthington in com. Cumbriæ; item, THOMAS DE MOULTON hæres THOMÆ DE MOULTON, dat Regi 100 marc. pro relevio ejuſdem THOMÆ de baronia de Gilleſland. Michaelis Fines anno 7. EDW. II.

RANULPHUS DE DACRE & MARGARETA uxor ejus, de manerio de Irthington, Burgh, Laſingby. FIN. Mich: 7. EDW. III.

RANULPHUS DE DACRE & MARGARETA uxor ejus, filia & hæres THOMÆ DE MOULTON de Gilleſland, & ISABELLÆ uxoris ejus, dat domino Regi 13 *s.* 4 *d.* pro relevio ſuo, de manerio de Kirkes Oſwald, cum pertinentiis in comit. Cumbrie, quod tenetur de Rege in capite, per ſervitium reddendi domino Rege per annum ad ſcaccarium Carliolenſis 13 *s.* 4 *d.* ad cornagium, ſicut idem RANULPHUS modo recognovit, ſicut continetur in originali, de anno 4. Regis nunc, ubi dictus RANULPHUS fecit Regi homagium pro manerio prædicto. In memorandis ſcaccarii, anno ſexto nuper regis EDW. III. de termino ſancti Michael. rot. 19. ex parte.

RANULPHUS DE DACRE, ſummoned anno 14. EDW. II, and not before, and ſo in all parliaments till he dyed.

The truth of the match of VAUXES heir with MOULTON proved by record, as alſo the leiger book of Lanercoſt founded by them, doth apparently manifeſt it; the lands and barony deſcending accordingly, doth make it clear and without contradiction.

MOULTON's heir to DACRE, who preſently after his match was ſummoned to parliament; and DACRE's heir with FYNES, who in like manner was ſummoned, and by patent his right eſtabliſhed by king HEN. VI. and by an award of king EDW. IV. his dignity limited, and his place ſettled.

HENRICUS

Cumbria.

Cartæ antiquæ in turre.

HENRICUS II. rex Anglie, dedit HUBERTO DE VALLIBUS & heredibus ſuis, totam terram quam GILBERTUS filius Bueth tenuit, & de incremento Kirkby cum Piſcaria & aliis pertinentiis ſuis, quam WESTYDBRITH filius WILHELMI STEFFEN tenuit, & Kaderleng cum molendino quum VILITREDUS filius HALDE tenuit, tenendum per ſervic. duor. milit. teſt. R. archiepiſc. Ebor. R. Lincoln. H. Dunelm. epiſc. H. comes Norff. comes ALBERICUS, comes GALFRIDUS, RI. DE LUCY, MANASSETH BISET, dapifer, H. de Eſſex conſtabular.

Cartæ antiquæ.

ROBERTUS DE VALLIBUS habet eandem terram per eundem Regem confirmatam, viz. HEN. II. Teſtibus BARTHOLOMEO Exon. epiſc. HENRICO electo Baiocenſi, comite GALFRIDO, & aliis, apud Windſor.

Cartæ antiquæ.

RICARDUS I. rex Anglie, confirmat eandem donationem ROBERTO DE VALLIBUS, anno regni ſui primo.

Ex Rotulo cartarum anno 9° Edw. II.

Rex RICHARDUS I. confirmat prioratui de Lanercoſt, quicquid ROBERTUS DE VALLIBUS, filius HUBERTI DE VALLIBUS eis dedit &c. & de toto illo quod dederit in boſcis ſuis, infra baroniam ſuam de terra que fuit GILLE filii BUETH, &c.

It appeareth by the priory book of Lanercoſt, founded by ROBERT, eldeſt ſon to HUBERT DE VALLIBUS, that the heires of that family being owners of the barony of Gillesland, were reputed and called barons of Gilleſland, and the heirs females, ladies of Gilleſland; and although it may be objected, that no direct proof can be had to prove them ſo, before the firſt ſummons, which was in anno 23. EDW. I. which, I confeſs, are ſtrong proofs to prove all thoſe then ſummoned to be barons; yet it proveth not that there was no barons before that time, for that were abſurd, to ſay the Kings had no barons till the ſummons, and therefore the priory book being authentical, no record to contradict it, the proof muſt needs be pregnant, that this family of VAUX were barons before any ſummons; but it may be objected, that THOMAS DE MOLETON, who married the daughter and heir of the laſt HUBERT, was never ſummoned, yet was he called by the ſaid priory book, baron of Gilleſland; for an-

HUBERTUS DE VALLIBUS, cui rex HEN. II. dedit baroniam de Gilleſland in com. Cumbriæ.

- ROBERTUS DE VALLIBUS baro de Gilleſland, fundator prioratus de Lanercoſt in comit. Cumbriæ.
  - WILLIELMUS DE VALLIBUS obiit ante patrem ſine exitu.
  - ROBERTUS DE VALLIBUS de Gilleſland.
    - HUBERTUS DE VALLIBUS baro de Gilleſland.
      - THOMAS DE MULTON baro de Gilleſland, obiit 55. HEN. III.
        - MATILDIS unica patris hæres, obiit 21. EDW. I.
          - THOMAS DE MULETON baro de Gilleſland, obiit 21. EDW. I.
            - THOMAS DE MULETON baro de Gilleſland, obiit 23. EDW. I.
              - THOMAS DE MULETON baro de Gilleſland, obiit anno 7^mo. EDW. II.
                - RANULPHUS DE DACRE baro de Gilleſland, evocatus ad parliamentum anno 14 EDW. II. obiit 13. EDW. III.
                - MARGARETA unica patris hæres, ætatis 13. annorum, ad mortem patris.

ROBERTUS DE VALLIBUS, filius HUBERTI DE VALLIBUS, conceſſit in perpetuam elemoſinam eccleſie MAGDALENE, & priori de Lanercoſt, & canonicis regularibus ibidem DEO ſervientibus, eandem Landam de Lanercoſt per has deviſas, &c. prope finem deinde verſus TINDALL per has deviſas, &c. per quas GILLEB. fil. BUETH. illam in vita ſua tenuit, & per quas dominus HEN. II. illam, HUBERTO DE VALLIBUS patri meo, & mihi dedit, &c. Item in foreſtanea de Walton, &c. Item in boſcis infra baroniam, cum multis aliis terris & beneficiis, pro ſalute Regis, predicti patris mei, & matris mee, & anteceſſorum meorum. Teſt. CHRISTIANO CANDID EASE, epiſcopo, WALTERO, priore de Karl. RICARDO MALATERRA, GILBERTO ENGAYNE, RADULPHO ENGAYNE, ROGERO DE VALLIBUS, WILLIELMO DE VALLIBUS, &c.

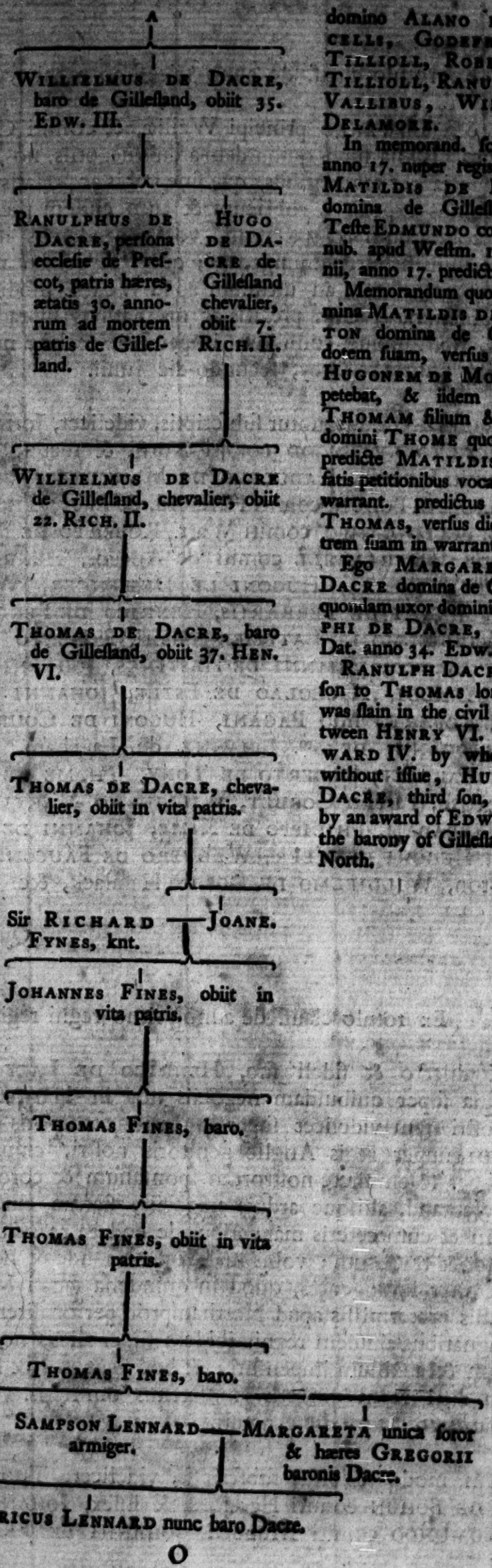
Fundatio priorat. de Lanercoſt.

Inquiſitio facta apud Brampton die Martis proximo poſt feſtum tranſlationis ſancti THOME, martiris anno regni regis EDW. I. 23°. pro breve domini regis quantum, viz. THOMAS filius THOME DE MULTON de Gilleſland tenuit de domino Rege in capite in com. predict. & quantum de aliis, &c. qui dicunt ſuper ſacramentum ſuum, quod idem THOMAS, tenuit de Rege in capite, baroniam de Burgo ſuper ſabulones per cornagium, &c. Item, THOMAS tenuit baroniam de Gilleſland de domino Rege in capite, per ſervitium duorum feodorum militum; item ibidem eſt quodque capitale manerium, quod vocatur Erthington, quod valet, &c. Item apud Bramton quod eſt membrum dict. baronie ſunt, &c. Item apud Fulwood quod eſt membrum ejuſdem baronie, ſunt, &c. Item apud Northmore quod eſt membrum ejuſdem baronie, &c. & dicunt quod THOMAS filius predicti THOME ultim. defunct. eſt heres ejus propinquior, & eſt ætatis 13. annorum ad captionem iſtius extent.

Cumbria eſchest. anno 23. EDW. I.

Ego MATILDIS DE MOULETON, domina de Gilleſland in ligea viduitate & poteſtate mea dedi PETRO DE HAYTON filio quondam PETRI DE TALKAN terras in territorio de Brampton, teſtibus ſwer

ſwer whereof it may be ſaid, that he dyed before any ſummons, viz. in anno 55. of king HEN. III. ſo that he could not be called. Item, That THOMAS, ſon of the ſaid THOMAS, was never called; it may be anſwered in like manner, that the ſaid THOMAS died before the ſummons, viz. in anno 21. EDW. I. and the ſaid ſummons being in anno 23. EDW. I. ſo that he could not be ſummoned. Item, THOMAS, ſon of THOMAS, ſon of THOMAS, was never ſummoned, who dyed in 23 year of EDW. I. before the ſummons, although it began in the ſame year; but THOMAS, ſon of the laſt THOMAS, was ſummoned to divers parliaments 'till 7. EDW. II. at which time he dyed, leaving only one daughter and heir, at the time of his death, thirteen years old, as appeareth by his office; which was married to RANULPH DACRE, who, in anno 14. EDW. II, was called to parliament, his wife then being twenty years old, and ſo ſummoned in all parliaments 'till he dyed, which was in anno 13. EDW. III. (never any of his name being called to parliament before the ſaid 14. EDW. II.) Likewiſe JOAN daughter of THOMAS DACRE, knt. ſon and heir of THOMAS lord Dacre, being married to ſir RICHARD FIENES, knt. as doth more plainly appear in this pedigree, was by king HENRY VI. ſummoned to parliament, and by his letters patents did ſignify, that whereas THOMAS DACRE, knt. late lord Dacre, and one of the barons of his kingdom of England, and which ſuch ſtate, title, and dignity to him, and his heirs, did inherit, is now gone the way of all fleſh, unto whom JOAN, wife of our welbeloved knight RICHARD FYNES, is couſin and next heir, viz. daughter to THOMAS, ſon and heir of THOMAS lord Dacre; the King, in conſideration of the premiſſes, doth accept, and repute the ſaid RICHARD FYNES as lord Dacre, and one of the barons of his kingdome.



domino ALANO DE LASCELLS, GODEFRIDO DE TILLIOLL, ROBERTO DE TILLIOLL, RANULPHO DE VALLIBUS, WILLIELMO DELAMORE.

In memorand. ſcaccarii de anno 17. nuper regis EDW. I. MATILDIS DE MOLTON domina de Gilleſland, &c. Teſte EDMUNDO comite Cornub. apud Weſtm. 16° die Junii, anno 17. predicti Regis.

Memorandum quod cum domina MATILDIS DE MOLETON domina de Gilleſland, dotem ſuam, verſus dominum HUGONEM DE MOULETON petebat, & iidem dominum THOMAM filium & heredem domini THOME quondam viri predicte MATILDIS de prefatis petitionibus vocaverunt ad warrant. predictus dominus THOMAS, verſus dictam matrem ſuam in warrant. intravit.

Ego MARGARETA DE DACRE domina de Gilleſland, quondam uxor domini RANULPHI DE DACRE, dedi, &c. Dat. anno 34. EDW. III.

RANULPH DACRE ſecond ſon to THOMAS lord Dacre, was ſlain in the civil broils between HENRY VI. and EDWARD IV. by whoſe death, without iſſue, HUMPHREY DACRE, third ſon, obtained by an award of EDWARD IV. the barony of Gilleſland in the North.

Ex rotulo clauſ. de anno tricesimo regni regis EDWARDI I.

De veniend. ad parliament. Regis.

REX, &c. EDWARDO principi Walliæ, & comiti Ceſtriæ, filio ſuo primo ſalutem. Quia ſuper quibuſdam arduis negotiis, nos, & vos, totumque regnum noſtrum ſpecialiter tangentibus, que ſine vobis ac prelatis & ceteris magnatibus dicti regni nolumus expediri; vobiſcum & cum eiſdem prelatis & magnatibus habere volumus colloquium & tractatum, vobis mandamus in fide & homagio quibus nobis tenemini firmiter injungentes; quod in octabis nativitatis ſancti JOHANNIS baptiſte proxim. futur. ad ultimum apud Weſtm. modis omnibus perſonaliter interſitis nobiſcum, & cum prelatis ac magnatibus ſupradictis, ſuper dictis negotiis tractaturi, veſtrumque conſilium impenſuri, & hoc nullatenus omittatis: Teſte Rege apud Thurroke Grey, ſecundo die Junii.

Conſimiles literæ diriguntur ſubſcriptis, videlicet, JOHANNI DE WARENNA comiti Surr. ROGERO LE BYGOD comiti Norff. & mareſcallo Anglie, HENRICO DE LACY comiti Lincoln. RADULPHO DE MONTEHERMERII comiti Glouc. & Hertf. HUMFRIDO DE BOHUN comiti Hereford. & Eſſex, THOME comiti Lancaſtr. GUIDONI DE BELLO CAMPO comiti Warr. ROBERTO DE VEER comiti Oxon. GILBERTO DE UMFRAMVILL comiti de Angos, HENRICO DE LANCASTR. ADOMARO DE VALENCIA, HUGONI LE DESPENCER, WILLIELMO LE LATYMER ſeniori, JOHANNI DE FERRARIIS, HENRICO DE PERCYE, ROBERTO filio WALTERI, WILLIELMO LE LATYMER juniori, ROBERTO DE CLIFFORD, ROBERTO DE MONTE-ALTO, JOHANNI DE HASTINGS, JOHANNI DE LA MARE, JOHANNI filio REGINALDI, NICHOLAO DE ESTLE, JOHANNI DE RIPAR. JOHANNI DE MOHUN, ROBERTO filio PAGANI, HUGONI DE COURTNAY, EDMUNDO DEYNCOURT, JOHANNI DE Sto. JOHANNE de Lagcham, THOME DE FURNIVALL, HUGONI BARDOLF, ROBERTO DE TONY, THOME DE BERKELEY, WILLIELMO DE BREWOSE, PETRO CORBET, WILLIELMO MARTIN, *THOME DE MULTON*, JOHANNI ABBADAM, PHILIPPO DE KIME, JOHANNI DE SEGRAVE, ROBERTO filio ROGERI, HUGONI DE VEER, WALTERO DE FAUCONBRIDG, RADULPHO BASSET de Drayton, WILLIELMO DE Ros de Hamlack, &c.

Quoad convenit cum recordo.

Ex rotulo clauſ. de anno primo regni regis EDWARDI II.

De veniendo ad parliamentum Regis.

REX dilecto & fideli ſuo, HENRICO DE LACY comiti Lincoln. ſalutem. Quia ſuper quibuſdam negociis nos in iſta tetenti ſuſceptione regiminis regni noſtri tam videlicet ſuper humatione corporis celebris memoriæ domini EDWARDI nuper regis Anglie genitoris noſtri, cujus anime propitietur Deus, quam ſuper ſolemnitate noſtrorum ſponſalium & coronationis noſtre auctore domino celebrand. aliiſque arduis negociis, ſtatum ejuſdem regni contingentibus, vobiſcum & cum ceteris magnatibus de eodem regno habere volumus colloquium ſpecialiter & tractatum; vobis mandamus in fide & homagio, quibus nobis tenemini firmiter injungentes, quod in quindena ſancti MICHAELIS prox. futur. omnibus aliis pretermiſſis apud Northampton perſonaliter interſitis nobiſcum & cum aliis magnatibus ejuſdem regni, ibidem ſuper dictis negotiis tractaturi, veſtrumque conſilium & auxilium impenſuri; & hoc ſicut nos & honorem noſtrum, ac commodum dicti regni diligetis, nullatenus omittatis. Teſte Rege apud Commenoke viceſimo ſexto die Auguſti.

Eodem modo ſcribitur ſubſcriptis, videlicet, THOME comiti Lancaſtr. HUMFRIDO DE BOHUN comiti Hereford. & Eſſex, JOHANNI DE WARRENNA comiti Surr. EDMUNDO comiti Arundell, JOHANNI DE BRITANNO comiti Richmond,

Guidoni de Bello Campo comiti Warr. Roberto de Veer comiti Oxon. Gilberto de Umframvill comiti de Anegos, Radolpho Basset de Drayton, Rogero la Warre, Johanni Paynell, Johanni la Warre, Johanni de Mowbray, Rogero de Mortuomari de Chirche, Hugoni Pointz, Rogero de Mortuomari de Wigmore, Henrico de Lancastr. Johanni de Ferrariis, Henrico de Percy, Hugoni le Despencer, Roberto filio Walteri, Willielmo le Latymer, Roberto de Clifford, Roberto de Monte-alto, Willielmo de Rithre, Reginaldo de Grey, Roberto de Scales, Ade de Welles, Almerico de Sto. Amando, Willielmo de Cantilupo, Johanni de Engaine, Willielmo de Leibourne, Johanni de Hastinges, Thome Bardolf, Johanni de la Mare, Johanni de Ripariis, Johanni de Mohun, Petro de Malo-Lacu, Roberto filio Pagani, Hugoni de Courtney, Johanni de Bello-Campo de Somerset, Willielmo de Grandisono, Johanni Extraneo, Johanni de Insula, Johanni de Sudle, Simoni de Monte-acuto, Thome de Latymer, Edmundo Deincourt, Johanni de Sto. Johanne, Thome de Furnivall, Robert Tony, Thome de Berkele, Willielmo de Brewosa, Petro Corbet, Willielmo Martin, Waltero de Teyes, Waltero de Huntercombe, Johanni de Lancastr. Johanni de Sto. Johanne, Henrico Tregoz, Johanni Lovell de Tichmersh, Alano de Zusche, Henrico Teyes, *Thome de Moulton de Egremond*, *Thome de Moulton de Gillesland*, Johanni ap Adam, Philippo de Kime, Johanni de Segrave, Roberto filio Rogeri, Hugoni de Veer, Waltero de Fawcunbridge, Nicholao de Segrave, Fulconi filio Warini, Johanni filio Reginaldi, Willielmo le Vavasour, Willielmo de Ferrariis, Edmundo baroni Stafford, Radulpho filio Willielmi, Bogoni de Knovill.

Quoad convenit cum recordo.

Ex rotulo clauſ. de anno quarto decimo regni regis Edwardi II.

REX dilecto conſanguineo & fideli ſuo, Thome comiti Lancaſtr. ſalutem. Quia ſuper diverſis & arduis negotiis, nos & ſtatum regni noſtri ſpecialiter tangentibus, parliamentum noſtrum apud Weſtm. à die nativitatis ſancti Johannis baptiſte prox. futur. in tres ſeptimanas teneri, & vobiſcum, ac cum prelatis, magnatibus & proceribus dicti regni habere proponimus colloquium & tractatum, vobis mandamus in fide & homagio, quibus vobis tenemini firmiter injungentes, quod dictis die & loco, omnibus aliis pretermiſſis, perſonaliter interſitis ibidem nobiſcum & cum prelatis, magnatibus & proceribus de regno predicto, ſuper dictis negotiis tractaturi, veſtrumque conſilium impenſuri. Et hoc nullatenus omittatis. Teſte Rege apud Weſtm. quinto decimo die Mali.

Eodem modo ſcribitur ſubſcriptis, videlicet, Thome de Brotherton comit Norff. & mareſcallo Anglie, Johanni de Warenna comiti Surr. Adomaro de Valencia comiti Pembr. Humfrido de Bohun comiti Hereford. & Eſſex. Edmundo comiti Arundell, Roberto de Veer comiti Oxon. Roberto de Umframvill comiti de Anegos, Johanni de Britanno comiti Richmond, Hugoni le Despenser ſeniori, Hugoni le Despencer juniori, Henrico de Lancaſtr. Willielmo de Brewosa, Roberto filio Walteri, Roberto de Monte-alto, Henrico de Bellomonte, Roberto de Holland, Richardo de Grey, Petro Corbet, Johanni de Grey, Johanni Buttetourt, Rogero Dammory, Johanni de Crumbwell, Radulpho de Camoys, Willielmo de Ros de Hamlake, Bartholomeo de Badlesmere, Nicholao de Segrave, Johanni de Segrave, Thome de Furnivall ſeniori, Thome de Furnivall juniori, Johanni de Somery, Johanni de Moubray, Radulpho de Monte-Hermerii, Hugoni de Courtney, Johanni Gifford

de

de Brimesfeild, Johanni de Charleton, Fulconi le Strange, Hugoni de Audley ſeniori, Hugoni de Audley juniori, Thome de Moulton de Egremond, Hugoni de Nevill, Thome de Barkley, Johanni de Sto. Johanne, Willielmo le Latimer, Johanni de Hastings, Rogero de Mortuomari de Wigmore, Rogero de Mortuomari de Chirk, Rogero de Clifford, Johanni de Bello campo, Radulpho Basset de Drayton, Mauricio de Berkley, Petro de Malo-Lacu, Willielmo Martyn, Auchero filio Henrici, Thome Wake, Edmundo Deincourt, Willielmo le Botiller de Wemme, Willielmo la Zuſche, Johanni de Clavering, Johanni Engaine, Ingelramo de Gynes, Willielmo de Grandiſono, Nicholao de Meinill, Roberto Peche, Fulconi filio Warini, Richardo de Plaiz, Radulpho de Gorges, Hugoni Pointz, Johanni de Thorpe, Roberto de Morley, Willielmo de Echingham, Thome le Archdecon, Thome filio Bernardi, Johanni de Sto. Johanne de Lagcham, Johanni Peeche, Henrico Huſe, Andr. de Harcela, Rogero de Bavent, Galfrido de Say, Willielmo de Ferrariis, Antonio de Lucy, Mauritio de Brun, Henrico Tregoz, Roberto de Inſula, Johanni de Sto. Amando, Johanni de Mohun, Johanni de Sudley, *Ranulpho de Dacre*, Henrico de Cobham, Philippo de Columbariis, Henrico Tyeys, Roberto de Scales, Radulpho de Graiſtock, Willielmo de Sto. Mauro, Johanni de Marmion, Henrico filio Hugonis, Ranulpho de Nevill, Marmaduco de Tweng, Richardo Walleys.

Quoad convenit cum recordo.

Rotulo Franciæ de anno 38. Edw. III. m. 16.

LE Roy a tous ceux as queux ceſtes lettres vendront ſalutz; ſachez nous avons veu & regarde les lettres patentes ſealles de ſealx de nobles hommes Robers Sires de Fiennes, coneſtables de Fraunce, & de dix & noef chivalers de ſa compaigne en la fourme q'ſenſuyt. Robers Sires de Fiennes, coneſtables de Fraunce à tous ceux qui ces preſentes lettres verront ou orront ſalutz. Sachent tout que nous avons faite & traitie, & fait traitier avent monſ. Johan de Dalton chivaler, & Daiquin d'Hatton Englois, capitaines de Regennes & de la Mote de Chanlay, les quelles fortereſſes il arderont, guſteront, & deſtruiront par les traities avant dis au departir du paiis, & departiront eulx & lour gens & gaigers par les maniers & conditions qui ſenſuyt. C'eſt aſſ. q'a leur departir il prendront 10. jours de terme pour les ardoir, gaſter & deſtruire en la manere q'il ſemblera a bien, & toutes maneres de vivres, de vitailles, & autres biens quelconques q'il ſoient, qui ſont dedans les dites fortereſſes, il purront vendre, ou donner ardoir ou deſtruir à lour volunte. Et quant il departiront des dites fortereſſes eulx & touz leur gentz & gaigers des garniſons avantdites porront franchement aler quelque part q'il leur plaira, armez ou deſarmez, avent leur valles, chivaux harnois, or & argent joyaulx, pilages, vivres & toutes maneres des biens quelconques q'il ſoient en leur compaigne ſeurement & ſalvement ſaunz aucune autre empeſchement. Et nous ſommes tenuz par nôtre fois & ſermens, que nous leur avons donne en ce cas de les convoier, & faire convoier ſeurement & ſalvement par chivalers & eſquiers bons & ſuffis' de nôtre compaigne juſques à Nogent le Retrou, ou à tant de chemyn, quelque part qui il vaurront aler ſaunz mal engin. Et que dedens un an apres la date de ces lettres, ils ne pueent demourer prendre fort chaſtel ne ville emparee, ou à emparer par larrecin ne autrement ne porter damage, ne faire guerre aucun es paiis raenconnez aux dites fortereſſes de Regennes, & de la Mote de Chanlay, ne au paiis raencone a la fortereſſe de Ligny, le chaſtel, ne chevaucheres dis paiis ſe ce n'eſt en la compaigne ou Roi d'Engleterre & de ſes enfans, ou de duc de Lancaſtre, ou d'autre lieutenant du dit Roi d'Engleterre ſauns mal engien. Et durant

le temps que il ſerront es dites forteresſes, eux leur gens & gaigiers pourront chivaucher des armes ſeurement & ſalvement par tout ou il leur plaira ſur bonne trieues que entre nous & eulx ſont accordez le dit temps durant. Et avent ce doivent les dites capitaines tant come il ſerront à Regennes & à la Mote laiſſer, paſſer, & repaſſer tant per yane comme par terre toutes maneres de marchandiſes paiſiblement ſans à eux faire empeſchement aucun & ouuer la Rivaire de Yonne, tant come il ſerront es dit lieux. Parmy ce que de tout les vins que nous & les gentz du paiis vaurons paſſer, ou faire paſſer per lour deſtrois. Il auront pour vint quenes de vyn, trois motons, d'or pour les officiers des Regennes. Et des maintenant il l'arront paiſiblement vendenger & labourer tout manieres de gens es pais deſſus dis de quelconque labeurs que il ſoient ſanz eux faire ne donner aucun empeſchement per eux ou per perſonne de lour garniſons. Et pour toutes les choſes deſſus dites faire tenir & accomplir de point en point ſommes & ſerrons tenuz devers les dites capitaines, en la ſomme de vint ſix mil florins d'or au moton, les quels ſe paieront aux termes en la manere qui enſuyt. Eſt aſſavoir que dedens un mois proſchain apres la datte de ceſtes cezemil moutons d'or. Et dedens cynk ſeptmains proſchains enſ. dix mil motons d'or. Et pour ceo tenir & paier aux termes deſſus nomes a vous nous obligee & obligeons nous & dix neuf chivalers de nôtre compaigne, dont les nomes ſont ici apres eſcript. Eſt aſſaver le ſeigneur de HANGEST, le mareſchal de champaigne, le ſeigneur de ESNON, le ſire de CHAUNGNY, meſſ. YLIER DE FLONGNY, meſſ. ERAT DE VAUSSEMAIN, le ſire de SENGNELAY, meſſ. PERCHEVAL DE LOUVAIN, meſſ. PIERRE DE VOUSERE, meſſ. JOHAN DE BLESMEREZ, meſſ. TRISTRAN DU BOIS, meſſ. GUILLIELME DE PLASSIE, le ſire de MELIGNY, meſſ. HINTASSE DE LA NUEUE RUE, meſſ. WARYN DE BOUCOND, meſſ. DRIEU DE FLAMGNY, meſſ. ESTIENNE DE FLAMIGNY, le ſire de MONTIGNY & meſſ. JOHAN DE MIGIE, per les fois & ſerments do nos propre corps & per tous les ſerments que chevalier pueent jurer de Dieu & per le ſaint ſacrement del autel, & per l'approuvement de noz ſeaulx à rendre & paier aux dis capitaines, ou à leurs certains commans les dites ſommes de motons d'or au termes deſurdis. Et engreignor ſeurete envoions nous des maintenant quatre de nos dis chivalers ſuffiſanz pour la dite ſomme, & pour tenir hoſtag. à Regennes per devers les dis capitaines ſanz villaines priſons tenir. Juſques à tant que la dite ſome de ſeſe mil motons deſſus dis ſerra au plain paie. Per condition que de tout ceo qui puie en ſera il ſerront quitte & retenront priſon fors pour ce qui ſerra paier tant ſoulement. Et en cas que deſſus ſerroit du paiement des deſſus dis ſeze mil motons aux termes deſſ. dit les capitaines deſſuz nomes pourront tenir les ditz hoſtaig. pour la ſome que demoura a paier. Et ſi pourront nommer neuf autr. chivalers des devant jures queulx qu'il leur plaira excepte nôtre propre corps des queulx nomes nous nous obligeons & promettons en la manere deſſus dite qui nous renouvoierons au terme deſſus dit a Regennes trois chivalers pour efforcier l'oſtaig. juſques à tant que la dite ſome ſoit à plain paie. Et ſe gouverneront les dites chivalers durant le terme du mois, ainſi comme il leur plaira, ſaunz auters couſtages de dites capitaines & le mois avantdit paſſe les capitaines deſſus ditz purront mettre les avant ditz chivalers, a deſpens raiſonnables & juſques à tant que la dite ſome ſeze mil motons ſerra plainement paie les ditz capitaines lever per devers eulx tous les vivres qui ſont accordez ſur leur paiis raenconne. Et apres ce que le paiement ſerra fait des dites ſeze mil moutons les capitaines avandis bailleront hoiſtages ſouffiſz per devers nous de winder les ditz fortereſſes dedens le terme de dix jours proſchains apres le paiement fait & de nous rendre nos hoſtages. Et nous promettons de tenir les ditz hoſtages ſans villanie, priſon & de leur rendre les dites fortereſſes, windes auxi touſt come il rendront les nôtres. Et en departir que les dites capitaines feront hors des dites fortereſſes avent lour gens, gaigers valles, chivaux harnois or & argent, pilages, vitailles & toutes autres maneres dauters biens en lour compaignie nous ſommes obliges & obligeons des les faire eſtre convoiez ſurement & ſauement en la manere comme deſſus eſt dit. Et en cas que aucun manere de gent du coſte François de quelque

condicion que il ſoient, Franceis, Engleis, Almans, Navarrois, Bretons, Normans, Gaſcoins, Picars, Flamens, Bourgignons ou autre manere de gent de nôtre coſte lour font aucune damage dedens la terme de nôtre dit conduit en corps ne en biens, nous & tous les chivalers avant ditz nous obligeons & promettons de leur faire rendre ſaunz aucun delai. Et pour les autres dix mil moutons paier aux termes deſſus dis les ditz capitaines au departir de Regennes pourront nomer quatre des nous dites chivalers ceulx comme il plaira excepte nôtre propre corps & lour aſſign. priſon en quelque forteresſe Engleis deça la meer. Et en cas que nous ſerrons en deffaut de paiement au terme deſſus dit, les quatre chivalers tenront priſon, & de la ne ſe partiront juſques à tant que la dite ſome ſerra plainement paie. Et pour ce ne demoura nie que nous touz en la maniere qui deſſus eſt dit demourons obligee en la dite ſome. Reſerue que en cas que deffaut ſerroit du paiement de la dite ſome aux terme deſſus dit, & nous rendons les avantditz chivalers quatre bien & loialement en lour priſon, nous ne ſerrons pas tenuz pur fauls ne periures de nos fois & ſeremens. Et eſpecialement les chivalers qui ſe rendront priſonner ſerront quites de lour fois, mais que le tennent loial priſon juſques à tant que la dite ſomme ſerra plainement paie. Et durant le dit temps que les capitaines ſerront à Regennes à la Mote & auſſi juſques à tant come il ſerront ſainement eulx & lour gens en quelque part que il leur plaira ſauns aultre empeſchement ou contredit de nous, ou d'autre de noſtre coſtè. Et auſſi eulx lour gens & valles avent leur chivaux porront aler guerre des fouraiges & de toutes autres vivres à quelle heure qu'il leur plaira ſaunz autre mal faire. Et en cas qu'aucun de eux ou de leur chevaux ſeroit pris durant le dit temps, nous ſommes oblige & promettons, de les rendre ſaunz delai a nôtre pouvoir ſaunz fraude & mal engien. Et en cas que les dites capitaines auront à leur departir de gens malades ou chivaux qui ne pourront travailler, il demourront ſeurement en quelque lieu que leur plaira à leur propre deſpens. Et apres ce qu'il ſerront gueris, nous & les chivaler avantdis nous obligeons & promettons, en la maniere deſſus eſt dit, de lour donner ſauf conduit, & faire convoier ſalvement en quelque lieu que il leur plaira a leurs propres deſpens come dit eſt, & ou mieux leur plaira ſoit en la forteresſe de Malicorne, Marre ou boys, ou chaſteau neuf ſur Loyre. Et ſe aucun des dites gens ſont pris ou perdu per aucun gent de nôtre coſte en leur chivaux nous ſommes obliges & promettons de le faire rendre aux capitaines avantditz ſaunz aucun delai. Et en cas que les deſſus dis capitaines ne pourront raſer les dites forteresſes, ne winder le pais pour empeſchement du Roi d'Engleterre de ſes enfans, du duc de Lancaſtre, ou autre lieutenant du dit Roi, il nous rendront ſraunchement les hoſtaiges, qui nous leur avons baille pour les deſſus dis ſeze mil moutons, & tout ce que receu ou auront ſe aucun choſe il en auront receu. Reſerve que de tout le vin que a ron devale per le paſſage & pertuis de Regennes nous lour paierons de chaſcun que ne de vin un moton. Et ceo qu'il ount reſceu de leur pais raenconne il averont fraunchement ſe als traities ne ſe tient. Et nous ROBERS SIRES DE FIENNES conneſtables de France avent les dix neuf chivalers deſſus dis, de nôtre compaignie des quels les nouns ſont percy deſſus eſcriptes avons promis & promettons per les fois & ſeremens de nos corps, & per tous les ſeremens que chivalers jurer de Dieu, & per le ſacrement de l'autel. Et auſſi nous nous obligeons & chaſcun de nous ſe oblige nos heirs, nos executours, & tous nos biens quelconques, & en quelque part qu'il ſoient ou pourront eſtre trouues de bien & loialement tenir & accomplir toutes les choſes deſſus dites de point en point en la fourme & manere come elles ſont deſſus eſcriptes ſaunz fraude cautelle, cauillacion ou mal engien. Et en cas qu'il auroit deſſaute en nôtre partie des choſes deſſus dites tenir & accomplir de point en point come nous l'avons devant promis, nous voulons & accordans & nous & chaſcun de nous ſoions tenuz par faux parjuries & repromiez devant tous juges en toutes cours, & en toutes places ou nous ſerrons ou l'un & chaſcun de nous ou temps avenir per ces preſentes lettres. En teſmoignance de la quelle choſe, & de toutes choſes deſſus eſcriptes, nous le dit ROBERS SIEUR DE FIENNES, avant les deſſus

dis

dis diſnuef chivalers en ces preſentes lettres obligatoires, avons mis nos ſeaulx & chaſcun de nous ſon propre ſeal. Don à Ancoitre le premier jour du mois de Decembre l'an de Grace mil trois centz cinquant & nuef. Nous a la ſupplication des dit JOHAN DE DALTON & DAYQUEN avons fait exemplifier les avant dites lettres en forme patente ſous nôtre grand ſeal d'Engleterre. Don a Weymonſtier le 12. jour d'Avril l'an du Grace mil trois centz ſoixante & quatre, & de nôtre regne trent huitieſme.

Ex libro inquiſitionum in archivis regiis Somerſ. & Dorſ. hundredo de Molvertok.

GULIELMUS DE FIENES tenet manerium de Mortok, quod fuit de dominico domini Regis de dono comitis GULIELMI filii REGINALDI, filii STEPHANI, qui manerium predictum dedit JARAMUSIO DE BOLONIA pro ſervitio unius militis.

Alibi inter recorda in turri London legitur quod GULIELMUS DE FIENES tenet manerium de Mortok de dono comitis GULIELMI, filii regis STEPHANI.

Comitia de termino Michaelis anno 42. HEN. III. Rotulo 2. in dorſo.

INGERAMUS DE FEDNES habet reſpectum de omnibus debitis que Regi debet, uſque in octabis ſancti Hillarii, & mandatum eſt vicecomitibus Eſſex, Northampton. & Bucks.

Comitia de termino Paſchæ anno 31. HEN. III. Rot. 6.

INGERAMUS DE FEDNES habet pardonationem diverſorum debitorum que Regi debuit.

Comitia de termino Paſchæ anno 30. HEN. III. Rot. 10. in dorſo.

INGERAMUS DE FEDLES habet reſpectum de omnibus debitis tam de præſtitis quam aliis debitis. Et mandatum eſt vicecomitibus Bucks. Eſſex, Surr. Somerſ. Dorſ.

Clauſ. de anno 11. EDW. I. m. 5.

Mandatum eſt cuſtodi foreſtæ Eſſex, quod in eadem foreſta permittat EGIDIUM DE FENDLES capere tres damos & eos habere de dono Regis, & quod ei ad damos illos capiendos diligenter auxilium ſuum impendat. Teſte Rege apud Kaernarvan 13. die Auguſti. Per breve de privato ſigillo.

Comitia de termino Michaelis anno 23. EDW. I. finiente, incipiente 24. Rot. 8. Oxon.

JOANNES DE FENES qui tenet terras quondam JORDANI LE FORRESTER, filii & hæredis REGINALDI LE FORESTER, de relevio ſuo.

Comitia de termino Hillarii, anno 24. EDW. I. Rot. 20. in dorſo.

Pro ISABELLA DE FENES quod bona & catalla ſua teneat in pace, licet de partibus tranſmarinis originem traxerit, & quod incola regni Regis exiſtit, & fidei Regis poſtquam regnum Regis ingreſſa fuit, conſtanter adhæſit, ſicut Regi conſtat evidenter. Scribitur theſaurario & baronibus de ſcaccario. Teſte Rege apud ſanctum Albanum 8° die Januarii anno 24°.

Patentes de anno 7. EDW. I. m. 21.

REX, univerſis & ſingulis de com. de Puntyf ad quos &c. ſalutem. Quia domina JOANNA regina Caſtell. & comitiſſa de Puntyf, viam univerſæ carnis eſt ingreſſa ut accepimus, cujus animæ Deus propitietur & parcat, per cujus mortem, dictus comitatus nobis & chariſſimæ conſorti noſtræ ALIANORÆ reginæ Angliæ, FENIS cuſtos com. Pontini.

Angliæ, ut filiæ & hæredi duciſſæ JOANNÆ accidit hæreditariè, propter quod nos cuſtodiam comitatus illius cum omnibus pertinentiis ſuis, committimus dilecto & fideli noſtro, GULIELMO DE FENES cuſtodiendum quamdiu nobis placuerit, vobis mandamus quod eidem GULIELMO, loco noſtro, & dictæ conſortis noſtræ tanquam cuſtodi ejuſdem intendentes ſitis & reſpondentes, conſulentes & auxiliantes, prout ipſe vobis ſcire faciet ex parte noſtra. In cujus, &c. quamdiu nobis placuerit duratur. Dat. apud Quenynton 21. die Martii.

Et mandatum eſt eidem GULIELMO, quod cuſtodiæ comitatus illius, intendat in forma prædicta, & quod de ſtatu comitatus ejuſdem & de tempore receptionis ſuæ, comitatus illius certificet Regem, & quod de negotio illo ſuper quo Regem ſecretò voluit certiorari per literas ſuas, & nuntium ſuum Regi nuntiando reſcribat. Dat. ut ſupra.

Placita de juratis & aſſiſis apud Cantuariam in octabis ſancti Hillarii, anno 7. EDW. I. rotulo 18.

GULIELMUS DE FENES petit verſus GULIELMUM DE VALENCE, & JOANNAM uxorem ejus, tertiam partem manetiorum de Braborn & Sutton.

Placita de juratis & aſſiſis in com. Suſſex, in craſtino ſancti JOANNIS baptiſtæ anno 7. EDW. I. rot. 33.

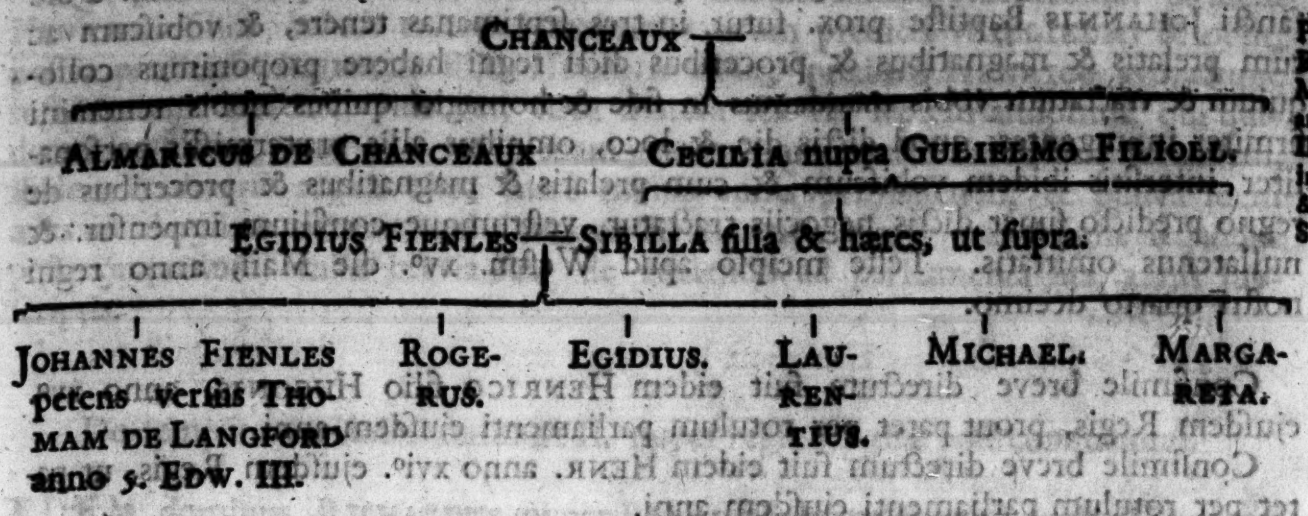
Magiſter RICARDUS DE PAGEHAM attachiatus fuit ad reſpondendum EGIDIO DE FENES & SIBILLÆ uxori ejus de placito quare prædictam SIBILLAM cepit & impriſonavit ad grave dampnum ipſorum EGIDII & SIBILLÆ, &c. Et unde queruntur quod idem magiſter RICARDUS in craſtino decollationis ſancti JOANNIS baptiſtæ, anno ſeptimo regni regis HENRICI III. prædictam SIBILLAM apud Wertellinger noctantur cepit & capere fecit per quoſdam ignotos, & eam abduxit & abducere fecit de loco ad locum, & poſtea eam apud Rungeton impriſonavit, & ibidem eam impriſonatam detinuit per tres annos ſequentes, ad grave dampnum ipſorum EGIDII & SIBILLÆ, unde dicunt quod deteriorati ſunt & dampnum habent ad valentiam quadraginta librarum, & inde producunt ſectam.

Et magiſter RICARDUS venit, & defendit vim & injuriam, &c. Et dicit quod nullam injuriam fecit, quia dicit quod quidam GULIELMUS FYLOLL & CECILIA uxor ejus, quorum filia & hæres prædicta SIBILLA eſt, conceſſerunt eidem magiſtro RICARDO, maritagium ipſius SIBILLÆ, & cuſtodiam & nutrituram ejuſdem SIBILLÆ, poſt mortem ipſius GULIELMI, pro ducentis marcis, unde ſolvit 6ˣ marcas. Ita quod poſt mortem ipſius GULIELMI, prædicta CECILIA, nutrituram ipſius SIBILLÆ, eidem RICARDO tradidit, & corporalem poſſeſſionem de prædicta SIBILLA poſuit ratione maritagii & nutrituræ de eadem percipiend. prout prius inter ipſum RICARDUM & prædictos GULIELMUM & CECILIAM convenerat, & quod nullam aliam injuriam fecit prædictæ SIBILLÆ, nec ipſam impriſonavit ſicut queruntur; petit quod inquiratur per patriam, & EGIDIUS & SIBILLA ſimiliter, & prædictus EGIDIUS ſolemniter vocatur non venit, & fuit querens, ideo ipſe & plegii ſui de proſequendo in miſericordia. Querantur nomina plegiorum. Pardonatur miſericordia quia licentiam habuit recedendi de brevi ſuo.

GULIELMUS FYLOLL tempore HEN. III.—CECILIA.

EGIDIUS DE FENES, anno 7. EDW. I.—SIBILLA filia & hæres prædictorum.

CHANCEAUX



Placita de BANCO termº Michaelis anno 5. Edw. III. pro terris in Wertling & Maukſey Suſſex.

An old writing, in parchment, found in the cloſet of THOMAS lord Dacre, after his death, great grandfather to MARGARET lady Dacre, wife to SAMPSON LENNARD, eſq; The title thereof was as followeth.

Conſiderations to ſhew unto the King's grace, why ſir THOMAS PARRE ſhould not have the name of lord Fitzhugh.

FIRST, the lord Dacre is the ſon and heir of the elder ſiſter, and one of the heirs of the lord Fitzhugh deceaſed, to whom the name of dignity ought to be referred, and ſo it hath been ever uſed within this realm of England of dukes, marquiſſes, earls, barons, and all other lords, having daughters to their heirs, the name of dignity hath always deſcended, and to be given to the eldeſt daughter, and to her heirs.

Item, Foraſmuch as it hath been ſo uſed, that the eldeſt daughter, and her heirs, ſhould have the name of dignity and honour, if the King's grace ſhould give the name of dignity to the heir of the younger daughter, that ſhould be a diſhonour and rebuke to the heirs of the eldeſt daughter to loſe that name, foraſmuch as to the contrary hath not been ſeen in times paſt.

Item, Such advantages and preheminences of the inheritances to them deſcended as do grow to the elder daughter, and her heirs, by the due order of the King's laws, for the preſentment to advowſons of churches, and other things; by means of that name of dignity, given to the heirs of the younger daughter, at length ſhall be loſt: Foraſmuch as men, in time coming, will ſuppoſe, verily, that the ſaid ſir THOMAS PARRE deſcended on blood of the eldeſt ſiſter, becauſe he hath the name of dignity, and that ſhall be always a great evidence to prove, that ſir THOMAS PARRE is heir to the eldeſt ſiſter, whereof the contrary is true.

Brevia diverſorum regum Anglie directa fuerunt anteceſſoribus WILLIELMI FITZHUGH militis, de veniendo ad parliamenta ſua, prout patet inferius.

De tempore domini EDWARDI II. nuper Regis Anglie poſt Conqueſtum.

IDEM dominus EDWARDUS, miſit breve ſuum HENRICO filio HUGONIS anteceſſori predicti WILLIELMI FITZHUGH, cujus heres ipſe eſt, videlicet, filius HENRICI, filii HENRICI, filii HENRICI, filii prædicti HENRICI, filii HUGONIS, de veniendo ad parliamentum ejuſdem Regis tentum apud Weſtm. anno regni Regis quarto decimo, ut patet per rotulum parliamenti ejuſdem anni, quod quidem breve ſequitur in hec verba.

EDWARDUS Dei gratiâ rex Anglie, &c. Dilecto & fideli ſuo HENRICO filio HUGONIS ſalutem. Quia ſuper diverſis & arduis negociis, nos & ſta-

tum regni noſtri ſpecialiter tangentibus parliamentum noſtrum apud Weſtm. à die ſancti JOHANNIS Baptiſte prox. futur. in tres ſeptimanas tenere, & vobiſcum ac cum prelatis & magnatibus & proceribus dicti regni habere proponimus colloquium & tractatum vobis mandamus in fide & homagio quibus nobis tenemini firmiter injungentes, quod dictis die & loco, omnibus aliis prætermiſſis perſonaliter interſitis ibidem vobiſcum & cum prelatis & magnatibus & proceribus de regno predicto ſuper dictis negociis tractatur. veſtrumque conſilium impenſur. & nullatenus omittatis. Teſte meipſo apud Weſtm. xv°. die Maii, anno regni noſtri quarto decimo.

Conſimile breve directum fuit eidem HENRICO filio HUGONIS, anno xv°. ejuſdem Regis, prout patet per rotulum parliamenti ejuſdem anni.

Conſimile breve directum fuit eidem HENR. anno xvi°. ejuſdem Regis, ut patet per rotulum parliamenti ejuſdem anni.

Conſimile breve directum fuit eidem HENR. anno xvii°. ejuſdem Regis, ut patet per rotulum parliamenti ejuſdem anni.

Conſimile breve directum fuit eidem HENR. anno xviii°. ejuſdem Regis, ut patet per rotulum parliamenti ejuſdem anni.

Conſimile breve directum fuit eidem HENR. anno xix°. ejuſdem Regis, ut patet per rotulum parliamenti ejuſdem anni.

Conſimile breve directum fuit eidem HENR. anno xx°. ejuſdem Regis, ut patet per rotulum parliamenti ejuſdem anni.

De tempore domini EDWARDI III. nuper regis Anglie poſt conqueſtum.

IDEM dominus EDWARDUS III. anno regni ſui primo, miſit conſimile breve predicto HENRICO filio HUGONIS prout patet per rotulum parliamenti ejuſdem anni.

Conſimile breve directum fuit eidem HENR. filio HUGONIS, anno ſecundo ejuſdem Regis ut patet per rotulum parliamenti ejuſdem anni.

Conſimile breve directum fuit eidem HENR. anno iv^to^. ejuſdem Regis, ut patet per rotulum parliamenti ejuſdem anni.

Conſimile breve directum fuit eidem HENR. anno v°. ejuſdem Regis, ut patet per rotulum parliamenti ejuſdem anni.

Conſimile breve directum fuit eidem HENR. anno vi^to^. ejuſdem Regis, ut patet per rotulum parliamenti ejuſdem anni.

Conſimile breve directum fuit eidem HENR. anno viii°. ejuſdem Regis, ut patet per rotulum parliamenti ejuſdem anni.

Conſimile breve directum fuit eidem HENR. anno xiii°. ejuſdem Regis, ut patet per rotulum parliamenti ejuſdem anni.

Conſimile breve directum fuit eidem HENR. anno xiv°. ejuſdem Regis, ut patet per rotulum parliamenti ejuſdem anni.

Conſimile breve directum fuit eidem HENR. anno xv°. ejuſdem Regis, ut patet per rotulum parliamenti ejuſdem anni.

Conſimile breve directum fuit eidem HENRICO, anno xvii°. ejuſdem Regis, ut patet per rotulum parliamenti ejuſdem anni.

Conſimile breve directum fuit eidem HENRICO, anno xviii°. ejuſdem Regis, ut patet per rotulum parliamenti ejuſdem anni.

Conſimile breve directum fuit eidem HENRICO, anno xx°. ejuſdem Regis, ut patet per rotulum parliamenti ejuſdem anni.

Conſimile breve directum fuit eidem HENR. anno xxi°. ejuſdem Regis, ut patet per rotulum parliamenti ejuſdem anni.

Conſimile breve directum fuit eidem HENR. anno xxii°. ejuſdem Regis, ut patet per rotulum parliamenti ejuſdem anni.

Conſimile breve directum fuit eidem HENR. anno xxv°. ejuſdem Regis, ut patet per rotulum parliamenti ejuſdem anni.

Qui quidem HENRICUS filius HUGONIS, habuit exitum HENRICUM, & idem HENRICUS filius habuit exitum HENRICUM avum predicti WILLIELMI & obiit, poſtea predictus HENRICUS filius HUGONIS obiit, predicto HENRICO avo adtunc infra ætatem exiſtente, videlicet, circa ætatem ſex vel ſeptem annorum, qui quidem HENRICUS avus, ad ſuam plenam ætatem transfretatus fuit uſque Jeruſalem, ibidem & diverſis regnis ultra mare multis annis permanendo, & poſtea idem avus in Angliam revenit, cui dominus RICHARDUS nuper rex Anglie ſecundus poſt conqueſtum, miſit brevia ſua, de veniendo ad parliamenta ſua, annis ſubſcriptis.

De tempore domini RICHARDI II. nuper regis Angliæ poſt conqueſtum.

IDEM dominus RICHARDUS nuper Rex, miſit breve ſuum predicto HENRICO Avo predicti WILLIELMI, de veniendo ad parliamentum ſuum tentum apud Weſtm. anno regni ſui primo prout patet per rotulum parliamenti ejuſdem anni.

Conſimile breve directum fuit eidem HENR. Avo predicti WILLIELMI, anno ſecundo ejuſdem Regis, ut patet per rotulum parliamenti ejuſdem anni.

Conſimile breve directum fuit eidem HENR. anno tertio ejuſdem Regis, ut patet per rotulum parliamenti ejuſdem anni.

Conſimile breve directum fuit eidem HENR. anno v^to. ejuſdem Regis, ut patet per rotulum parliamenti ejuſdem anni.

Conſimile breve directum fuit eidem HENR. anno vi^o. ejuſdem Regis, ut patet per rotulum parliamenti ejuſdem anni.

Conſimile breve directum fuit eidem HENR. anno vii^o. ejuſdem Regis, ut patet per rotulum parliamenti ejuſdem anni.

Conſimile breve directum fuit eidem HENR. anno viii^o. ejuſdem Regis, ut patet per rotulum parliamenti ejuſdem anni.

Conſimile breve directum fuit eidem HENR. anno ix^o. ejuſdem Regis, ut patet per rotulum parliamenti ejuſdem anni.

Qui quidem HENRICUS avus, habuit exitum HENRICUM patrem predicti WILLIELMI FITZHUGH & obiit, eodem HENRICO patre ad tunc plenæ ætatis exiſtente, & eidem HENR. patri predicti WILLIELMI, predictus dominus RICHARDUS nuper Rex mandavit.

Conſimile breve de veniendo ad parliamentum ſuum tentum anno regni ſui x^o. ut patet per rotulum parliamenti ejuſdem anni.

Conſimile breve directum ſuit eidem HENR. patri WILLIELMI, anno xi^o. ejuſdem Regis, ut patet per rotulum parliamenti ejuſdem anni.

Conſimile breve directum fuit eidem HENR. patri, anno xii^o. ejuſdem Regis, ut patet per rotulum parliamenti ejuſdem anni.

Conſimile breve directum fuit eidem HENR. anno xiii^o. ejuſdem Regis, ut patet per rotulum parliamenti ejuſdem anni.

Conſimile breve directum fuit eidem HENR. anno xiv^o. ejuſdem Regis, ut patet per rotulum parliamenti ejuſdem anni.

Conſimile breve directum fuit eidem HENR. anno xv^o. ejuſdem Regis, ut patet per rotulum parliamenti ejuſdem anni.

Conſimile breve directum fuit eidem HENR. anno xvi^o. ejuſdem Regis, ut patet per rotulum parliamenti ejuſdem anni.

Conſimile breve directum fuit eidem HENR. anno xvii^o. ejuſdem Regis, ut patet per rotulum parliamenti ejuſdem anni.

Conſimile breve directum fuit eidem HENR. anno xviii^o. ejuſdem Regis, ut patet per rotulum parliamenti ejuſdem anni.

Conſimile breve directum fuit eidem HENR. anno xx^o. ejuſdem Regis, ut patet per rotulum parliamenti ejuſdem anni.

Conſimile breve directum fuit eidem HENR. anno xxi^o. ejuſdem Regis, ut patet per rotulum parliamenti ejuſdem anni.

De tempore domini HENRICI IV. nuper Regis Anglie poſt conqueſtum.

Idem dominus HENRICUS nuper Rex mandavit conſimilia brevia predicto HENRICO patri predicti WILLIELMI, de veniendo ad parliamenta ſua, prout patet per rotulos parliamentorum ejuſdem regis HENRICI.

De tempore domini HENRICI V. nuper regis Anglie poſt conqueſtum.

Idem dominus HENRICUS V. nuper rex, mandavit conſimilia brevia predicto HENR. patri predicti WILLIELMI, de veniendo ad parliamenta ſua, prout patet per rotulos parliamentorum ejuſdem regis HENRICI V.

De tempore domini Regis nunc.

Idem dominus Rex nunc mandavit conſimilia brevia predicto HENRICO patri predicti WILLIELMI FITZHUGH, de veniendo ad diverſa parliamenta ſua, prout patet per rotulos parliamentorum ejuſdem domini Regis nunc.

De tempore domini HENRICI VI. nuper regis Anglie.

Item idem HENRICUS VI. nuper rex Anglie mandavit conſimilia brevia dicto WILLIELMO FITZHUGH, de veniendo ad diverſa parliamenta ſua, prout patet per rotulos parliamentorum ejuſdem nuper Regis, videlicet, a morte dicti HENR. patris ſui, uſque ad mortem dicti WILLIELMI, ut patet per eoſdem rotulos.

Idem HENRICUS nuper rex Anglie ſextus, mandavit conſimilia brevia HENRICO FITZHUGH qui nunc eſt, poſt mortem dicti WILLIELMI patris ſui, de veniendo ad diverſa parliamenta ſua, ut patet per rotulos parliamentorum ejuſdem nuper Regis.

De tempore domini regis EDWARDI IV. poſt conqueſtum qui nunc eſt.

Idem dominus Rex nunc mandavit conſimilia brevia dicto HENRICO FITZHUGH, filio & herede predicti WILLIELMI, de veniendo ad diverſa parliamenta ſua, prout patet parliamentorum rotulis ejuſdem domini Regis nunc.

Et notandum eſt quod ultra omnia brevia predicta anteceſſoribus predicti HENRICI domini Fitzhugh qui nunc eſt temporibus diverſorum regum diverſis anteceſſoribus ſuis directa, de veniendo ad parliamenta ſua; nihilominus tamen apud parliamentum nuper tentum apud Leyceſtriam anno ix°. predicti nuper regis Angliæ ſexti, ibidem pro tempore exiſtentibus, regentibus & preſidentibus in dicto parliamento, JOHANNE nuper duce Bedford, HUMFRIDO nuper duce Gloceſtr. HENRICO nuper cardinale Anglie, cum multis aliis magnatibus & proceribus dicti regni poſt certam noticiam diligentem inſpectionem, & maturam deliberationem tam diverſorum ſcriptorum authenticorum quam diverſarum chronicarum ibidem oſtenſarum quam aliorum recordorum, monumentorum & cartarum ibidem, & adtunc per WILLIELMUM FITZHUGH patrem dicti HENRICI coram eiſdem ducibus, magnatibus, & proceribus in dicto parliamento oſtens'. Et adhuc penes ipſum HENRICUM remanencia; conſideratum, decretum & ordinatum fuerat, & approbatum fait, quod predictus WILLIELMUS locum in parliamento jure & titulo preſcriptionis, ſucceſſionis & continuationis teneret, gauderet, haberet & occuparet, ſicut omnes anteceſſores ſui exiſtentes, plene ætatis & infra regnum Anglie predictum tenuerunt, habuerunt & continuaverunt, à tempore quo non extat memoria, uſque illud tempus.

Barony of *BERGAVENNY.*

The right and title of sir THOMAS FANE, ***of Kent, knight, to the name, stile, and dignity of lord Bergavenny, in the right of dame*** MARIE, ***his wife, daughter and sole heir of*** HENRY, ***late lord of Bergavenny, deceased.***

E. Col. Greg. King. Lanc^r. Herald.

Founded and grounded upon the most ancient and laudable custom of this realm of England; wherein women are capable of feodals and dignities, and their husbands, in their right, are wont to possess their said feodals, stiles and titles.

Women and their husbands.

Which custom, in that behalf, is plentifully proved by sundry examples of great and reverend antiquity, and fortified with very many authorities and reasons, which in the defence thereof are produced; whereof some serve for answer to such objections, as in this discourse incidently are framed.

SIR THOMAS FANE of Kent, knight, having espoused the lady MARY, only daughter and heir of HENRY, lord and baron of Bergavenny, lately departed this life without issue male of his body engendred; by whom it hath pleased God to bless him with many fair children, and considering with himself, that as thereby he is tenant by the courtesie of England, to all her inheritances during his life; whereof, to his understanding, the honourable title and dignity of Bergavenny is an inseparable part and portion; even so likewise doth he esteem it to be his part and duty, to apprehend and preserve the same in her right, to the behalf and benefit of her heir.

Howbeit, before he would presume to take that honour and dignity upon him, or enterprise the thing that possibly might be offensive or displeasant unto the Queen's most excellent Majesty, his gracious soveraign, from the throne of whose regal estate, as from a fountain, he acknowledgeth all honour and dignity to flow, and have his source and derivation, or seem to prejudice or derogate the right of any other person, making claim, or pretending title thereunto: And to avoid such further inconvenience, as for want of orderly proceeding, might ensue; he hath thought it good and expedient in this manner to make known his said interest and title, and to set down some of a greater number of reasons, which, to his understanding, do make to the furtherance thereof, with his answers to certain objections, incidently laid against the same; which he protesteth to be by him done, not of any high aspiring mind, reaching after honour and high estate in this commonwealth, but only for the acquital and discharge of his duty, binding him to the maintenance and preservation of all that, which by the law and custome of the land, shall be found rightly to belong unto him, by reason of his said espousals.

With all humility and obedience, submitting both himself and the cause, unto the gracious good will and pleasure of her most excellent Majesty, and the learned doom and censure of such, as she shall be pleased to appoint hearers and discussers thereof.

First, It is to be understood, that king RICHARD II. sometime king of England, noble progenitor to the Queen's most excellent Majesty, in the 16th year of his reign, caused his writ of summons to be directed to one sir WILLIAM BEAUCHAMP, knight, younger son and brother to the noble earls of Warwick, commanding him thereby to appear at his parliament holden at York, and after

16. RICH. II. summons to sir WILLIAM BEAUCHAMP, knt.

at Winchester the same year, by the name of sir WILLIAM BEAUCHAMP of Bergavenny; and by vertue of the same writ, the said sir WILLIAM BEAUCHAMP appeared and sat in the said parliament as a baron of the land; and by that authority was taken, reputed, and known to be a baron of this realm by the name of lord of Bergavenny during his life: Afterward the said WILLIAM, lord of Bergavenny, dyed in the thirteenth year of the reign of king HENRY IV. anno Domini 1410; after whose death the same name, stile, and title, and dignitie of Bergavenny, did descend unto one RICHARD BEAUCHAMP, son and heir of the said WILLIAM; which RICHARD, son and heir of WILLIAM, was taken, reputed, called, and known, as a baron of this realme, by the name of lord of Bergavenny, during his life; who, in the eighth year of the reign of king HENRY V, was created earl of Worcester, and so deceased earl of Worcester, and lord of Bergavenny, the year following, being the ninth of that King's reign, anno Domini 1420, leaving no issue male, but one only daughter of his body begotten, that was his heir, called ELIZABETH, which was married to sir EDWARD NEVILL, the youngest son of RALPH, the first earl of Westmerland; which sir EDWARD NEVILL having issue, by the said dame ELIZABETH his wife, his first begotten son, called GEORGE, born unto him in the nineteenth year of the reign of king HENRY VI. was immediately after the birth of such issue, called, written, reputed, and taken, to be lord and baron of Bergavenny, in the right of the said dame ELIZABETH, being sole daughter and heir to her father, as is aforesaid, according to the ancient and approved customs of this realm of England, from all antiquity, and beyond the memory of man, in the like case always observed and used; which sir EDWARD NEVILL, lord of Bergavenny, by the custom and courtesie of England, as is aforesaid, had also a writ of summons directed to him, by the said king HENRY VI, in the twenty ninth year of his reign, as other barons of the realme had, commanding him to appear at his parliament, holden at Westminster the same year, by the name of EDWARD NEVILL of Bergavenny, knight; which EDWARD had the like vocation and summons to sundry other parliaments, holden in that King's reign; and during his life, was written, called, reputed, and taken, by the name of lord of Bergavenny. And after the decease of the said EDWARD, lord of Bergavenny, which happened in the nineteenth year of the reign of king EDWARD IV, the same name, stile, title and dignity, did descend to the before-named GEORGE, as son and heir unto the said EDWARD; which GEORGE was likewise written, called, reputed, and taken, as a baron of this realm, by the name of lord of Bergavenny, during his life, and had issue GEORGE, his son and heir, and dyed in the seventh year of the reign of king HENRY VII, anno Domini 1492; which GEORGE, the son of GEORGE, as heir unto his said father, did, after his decease, enjoy the name, stile, title, and dignity of lord of Bergavenny during his life, and had issue HENRY, his son and heir, and dyed in the twenty seventh year of the reign of king HENRY VIII, anno Domini 1535. Which HENRY, in like manner, after the decease of his said father, was written, called, reputed, and taken, as a baron of this realm, by the name of lord of Bergavenny during his life, and of the said name, stile, title, and dignity dyed seised, the eighth day of February, in the nine and twentieth year of the reign of the Queen's most excellent Majestie that now is, anno Domini 1586, leaving issue one only daughter his sole heir, called MARY, now the wife of sir THOMAS FANE of Kent, knight, who by her hath issue four sons, and one daughter.

Earl of Worcester.

ELIZABETH, wife to sir EDWARD NEVILL.

Earl of Westmerland.

So that the name, stile, title, and dignity, of the barony of Bergavenny, after the decease of the said HENRY, the last lord thereof, by the ancient usage and custome of this realm of England, is now descended, and of right ought to descend unto the foresaid sir THOMAS FANE, knight, as in the right of the said dame MARY his wife, sole daughter and heir of the said HENRY, the last lord of Bergavenny, by reason of the issue and engendrence, had, and reserved of the body of the said dame MARY, making him tenant, by the courtesie of England, of all her inheritances, whereof this stile, title, and dignity of Bergavenny is an inseparable part and portion.

This ſir WILLIAM BEAUCHAMP, younger ſon of THOMAS, and younger brother to THOMAS, earls of Warwick, was created lord of Bergavenny by writ in the ſixteenth year of the reign of king RICHARD II.

Sir WILLIAM BEAUCHAMP, lord of Bergavenny.

RICHARD BEAUCHAMP, lord of Bergavenny, created earl of Worceſter.

Sir EDWARD NEVILL, lord of Bergavenny, in the right of his wife. — ELIZABETH ſole daughter and heir of RICHARD, lord of Bergavenny.

GEORGE NEVILL, lord of Bergavenny.

1. GEORGE NEVILL, lord of Bergavenny, entailed his lands, (for the moſt part) for want of heirs males of his own body, to the heirs males of his brother ſir EDWARD NEVILL, the remainder in fee, to his own right heirs.

2. Sir EDWARD NEVILL, knt. younger ſon, attainted for treaſon, 29. HEN. VIII. forfeited all his remainder unto the king HEN. VIII. who dyed ſeiſed of that remainder, ſo dyed alſo king EDW. VI.

HENRY NEVILL, the laſt lord of Bergavenny.

EDWARD NEVILL, now of Bergavenny, by virtue of an entail reſtored by act of parliament to the remainder forfeited, ſo long as there ſhall be any heirs males, but the remainder to the heirs general preſerved to the Queen, 2. PHIL. & MARIÆ.

Sir THOMAS FANE of Kent, knt. — MARY ſole daughter and heir of HENRY, lord of Bergavenny.

EDWARD NEVIL, ſon and heir apparent.

1	2	3	4	5
FRANCES a daughter.	FRANCIS FANE eldeſt ſon.	GEORGE FANE 2d ſon.	THOMAS FANE 3d ſon.	EDWARD FANE 4th ſon.

Foraſmuch as the ſtate of this challenge and claim, is for the title of a barony, being a matter of nobility and chivalry, the queſtions thereof, and the manner of trials, are not wont to be made by juries, after the courſe of the common law, but by depoſitions and proofs, after the manner of the civil law; and therefore the high conſtable and marſhal of England, the uſual judges thereof in times paſt, were accuſtomed to call divers doctors in the civil law, and officers of armes to aſſiſt them; yet alwayes the iſſues did rely upon the cuſtomes of chivalry, uſed within this realme, or elſewhere, in any other countrey or kingdome; for ſo do all the doctors in civil law hold, that titles and matters of honour and dignity are to be ordered and ruled, according to the cuſtome of every particular countrey, they ſet it down for a maxime or principle, that *Conſuetudo in unaquaque regione eſt omnium dignitatum* - - - - - - - - - - - - - - - - - - ſaith, *Conſuetudini ſtandum eſt diſponenti de nobilitate.* Cap. 10. ſaith thus, *Quod ſi in reſcripto vel alia diſpoſitione fiat mentio nobilium, intelligendum eſt de nobilibus, ſecundum loci conſuetudinem.* And again in the ſame cap. *Conſuetudo nobiles facit, & ignobiles, ita quidem ut quis ſit in uno loco, ex conſuetudine illic obſervatâ, nobilis, qui ignobilis alibi reputatur.*

Cuſtoms of chivalry.

Cuſtoms or uſage.

And

And to this effect for Spain, one JOHN of OTALARA uſeth theſe words,

Hiſpaniæ. *Cauſæ nobilitatis ſunt mere peculiares noſtræ Hiſpaniæ, & quædam modo ſunt anomalæ; ideo non poſſunt proprie determinari, per leges Romanorum ſed de jure noſtro.*

Germany. As in Germany, the creation of a duke advanceth not the children of the perſon created, born before the creation, yet in England it is otherwiſe.

Women. Women by birth in Germany, enjoy the titles of ducheſſes, counteſſes and baroneſſes; yet are unable to enjoy dukedomes, earldomes and baronies; in England, France, and Spain, women are capable of both, if in the grant, no limitation be to the heirs males.

That this queſtion touching the barony of Bergavenny, is not determinable by the common laws of this realm, may well be proved by ſundry preſidents of pleadings, in the like caſes, uſually wont to be heard and determined, in the court of chivalry before the high conſtable and marſhal of England, namely, the plea between REGINALD lord Grey of Ruthyn, and ſir EDWARD HASTINGS, in king HENRY IV's time, for the ſtile and armes of lord Haſtings, holden as parcel of the inheritance, and claymed by the woman, as this ſtile of Bergavenny is, and ſentence given with the lord GREY, under the high conſtable's ſeal of his office; becauſe in that proceſſe, it is proved and confeſſed, that armes and ſtiles are inheritable, and holden to be parcel of the inheritance.

Haſtings armes.

The like judgment was there given, in the like caſe, between the lord LOVELL and the lord MORLEY for BURNELLS arms.

Burnell.

Old uſage alſo, time out of mind, in the marſhalling and placing of great eſtates, contrary to the common law of the land, is an evident proof of this cuſtome, in cauſes of honour and nobility.

Earls daughters. For the common law doth no where teach or pronounce, that all the daughters of an earl, ſhould immediately, upon their father's creation, be ladies, and that as well thoſe born before the creation as after.

Earls daughters marry eſquires; marry a baron. The common law ſaith not, that if an earl's daughter marry with an eſquire, ſhe holds ſtill her place and name, and that ſhe looſeth both marrying with a baron; but is of contrarie ſentence.

By maxime of the common law, no ſtate of inheritance paſſeth by gift, but by theſe words, to the ſon, and to his heirs; but the gift of the title of a baron by virtue of writ is otherwiſe.

Writ of ſummons. By common law, the King's gift is not good, but by his letters patents, and that by ſpecial words of grant; but in the writ of ſummons there are no words of grant, neither mention of lord or baron, but knight, of ſuch a place, called for his advice and counſel, to be given in the parliament, whereby no colour may be gathered of creation and erection of the perſon ſummoned into the ſtate of a baron, and leaſt of all to be expounded a ſtate of inheritance as notwithſtanding it is.

By the common law, no man can be called lord of a mannor, having not ſo much as colour of right to it, but by the law of chivalry, a man may be earl of a county, having no right nor intereſt to it, nor one foot of land in it; and may be baron of a place, which is the inheritance of a ſtranger.

By common law the ſtile and dignity of the anceſtor cometh not to the heir, whilſt the anceſtor liveth, but by the law of chivalry, the father being of a baron, made an earl, the ſon immediately is inveſted in the title of his father's barony, without words or ceremonie, and contrary to the words of entail.

The rule of theſe, and ſuch like caſes, is not one and the ſame in all countreys, but the cuſtome of every countrey is to be followed within the ſame for law.

And of all other ſtates, the queſtion is leaſt doubtfull, in the ſtate of a baron, for all authors agree, that duke, marquis, and earl, were in the beginning but names only of offices, and not of inheritance; but the name of baron was, from the beginning, a ſtate of inheritance, joined with fee and juriſdiction over his own vaſſals, in his own territory, as may appear by the antiquity of court barons.

Court barons.

England, France and Spain, differ not much in cuſtome touching baronies: For in either countrey after the death of any baron, without heir male, the next female being heir general to the ſaid baron, doth enjoy the firſt portion of the inheritance, together with the ſtile, title, and dignity, as a parcel thereof. Baronies.

That the ſame cuſtome hath, from the beginning, taken place, and had continuance in England, is plentifully proved in the end of this treatiſe, by ſundry examples, in the times of the reigns, and government of all the kings ſince the Norman conqueſt; and the reaſons why the ſame cuſtome ſhould ſtill be holden and kept, are many and forcible.

Firſt, the example of other the moſt noble and beſt governed kingdomes our neighbours, uſing the like.

Then the principal rule of the law, l. 1. y. 5. *Sedet ſi ſerũs ff. de ventre inſpiciendo*; ſaying, *Reipublicæ intereſt, quod ordinum dignitas familiarumque ſalva ſit.*

Cassaneus ſaith, *Eſt quoddam jus, quod datur unicuique agnationis ſive familiæ, quod non videtur poſſe tranſire ex illa*; and he putteth for that right, *Arma & nomina familiæ, quæ gradatim deveniunt ad ſucceſſores, & alienari non poſſunt.* Not alienable.

The ſame Cassaneus ſaith in another place, that in default of heirs, *nomen & arma* may be alienated by deviſe in teſtament, with the inheritance, and theſe be his words: *Arma & nomen, damus & familiæ legari ſive concedi poſſunt, cum hæreditato alieno, ſi non ſuperſit ſucceſſor de familia: Et cogitur legatarius, nomen & arma gerere, alioqui perdit hereditatem.*

Theſe laws ſhew a natural ſtudy and care for the conſervation of dignities in ancient houſes, without reſpect of ſex.

The contrary opinion is greatly derogatorie to the honour and right of moſt of the ancient earls of this realm, which if they ſhall not be permitted to enjoy their titles deſcended unto them, from women, muſt cancell and deface out of their ſtiles, all the titles of the baronies by them uſed, which deſcended unto them from women. Titles from women.

Likewiſe every baron, having two baronies, if this cuſtome were not, muſt blot out of his ſtile one of them, becauſe the firſt writ of creation, which cauſed his advancement unto that eſtate, maketh mention but of one.

And ſo (at that rate) ſhould the earl of Arundel, at this day, wipe out of his ſtile the barony of Maltravers.

The earl of Oxford, his baronies of Bulbeck, Sandford, and Badleſmere.

The earl of Northumberland, his baronies of Percy, Poynings, Bryan, and Fitz-payne.

The earl of Shrewsbury, his baronies of Strange de Blackmere, Furnival, Lovetot, and Verdun.

The earl of Derby, his barony of Strange de Knokyn.

The earl of Worceſter, his barony of Herbert de Caerdiff.

The earl of Rutland, his baronies of Roos de Hamlake, d'Albany, de Beauvoir and Trusbut.

The earl of Cumberland, his baronies of Vipount de Weſtmerland, Bromflete and Veſcy.

The earl of Suſſex, his baronies of Fitzwalter, Egremond, and Burnell.

The earl of Huntingdon, his baronies of Hungerford, Botreaux, Molins, and Moels.

The earl of Bathe, his barony of Fitz-warin.

The earl of Warwick, his barony of l'Iſle.

The earl of Hertford, his barony of Beauchamp.

The earl of Eſſex, his baronies of Ferrers de Chartley, Bourchier, and Lovain.

And the earl of Lincoln, his barony of Saye.

For they hold theſe baronies neither by letters patents, neither by writ, but by the continuance of that cuſtome, which alloweth them the ſtile and title, as rightly deſcended unto them from their anceſtors, which married the daughters and coheirs general of their baronies.

Summons to parliament.

Letters patents, as is ſaid, they have none; for kings uſe not to create earls, barons. And in the ſummons to parliament, the form is to put but one barony; then the other muſt quail, if their claim from women ſhould be diſallowed.

But foraſmuch as theſe our earls now living, and others before their time, do enjoy theſe their titles by great right, this queſtion, both by law and uſe, is determined on our ſide; the continuance of the cuſtome proveth the lawfulneſs thereof ſufficiently againſt whatever ſurmiſe.

Object. If any ſhall thus reaſon and ſay, that although theſe earls beforementioned, do uſe the ſtiles and titles of thoſe baronies, yet that doth not make them barons:

Reſponſ. That is thus ſoon anſwered; Although they uſe them not to make themſelves barons, yet they uſe them becauſe the law of the realm, by the woman, hath enabled and warranted ſo to do. And as for their honours ſake, they would not unlawfully uſurp them, neither would the Princes of this realm in all ages, without juſt cauſe, have tolerated the uſe of them.

Therefore it is to be well weighed and conſidered, That as by this uſage and cuſtome, it is moſt clear and certain, that a barony with the ſtile and dignity, for want of iſſue male, may and ought to deſcend to the daughter and heir of a baron, if the ſaid barony were firſt eſtabliſhed by writ (as this of Bergavenny was) as before hath been ſhewed, whether the alteration and change of this cuſtome, may be beneficial to the commonwealth, which ſurely ſeemeth not, unleſs any be ſo impudent to affirm and maintain, that the continuance of the ſtate of barons is dangerous, which hitherto hath been reputed as a brazen wall to the imperial crown of this realm.

Baronage a wall to the crown.

In ancient time the patricians and ſenators (of which ſort conſuls and prætors were choſen) were the only nobility in Rome. And that nobility with them deſcended from the father, as well to children female, as male; and both ſexes were eſteemed of the ſame degree of nobility, that their elders held, *uſque ad pronepotes*. So that thoſe laws which barre women from dignity, are to be underſtood of dignity, with adminiſtration of juſtice, not of birth and marriage.

Women.

And as the cuſtomes of England, always diſſented greatly from the Romans; ſo at this day Rome and Italy itſelf, differeth as wide as heaven from earth, from their firſt form, cuſtomes, and rites of nobility and dignity: For among them the titles of duke and earl denoted an office and dignity in camp; and that of earl was abaſed to the officers of the maſters of metals, of the granary, and of the works which were unfit for women to uſe; as for this of baron, it was not yet hatched.

Duke, earl.

Since the tranſlation of the empire, thoſe dignities of office, are become dignities patrimonial, and hæredital, and in divers places, the dignities are annexed to the patrimony.

Therefore thoſe provinces which allow women to ſucceed in their parents feodals and patrimonies, as in dukedomes, earldomes, and baronies, (which be greater things to poſſeſs, than are the bare titles and names of them) in granting the more, by congruity yielded unto them the leſs; and ſo the ſtiles and titles of dignity, are become parcels of the inheritance and patrimony, and may not be taken from them by the Prince, no more than any other inheritance but by way of forfeiture, eſcheat or extinguiſhment.

Titles of dignity not to be by the King reſumed.

Of this latter form of nobility, and dignity patrimonial, the doctors determine, that if it be *conjuncta feodo*, then it deſcendeth to whom the fee doth deſcend; if it be *ſeparata à feodo*, then it deſcendeth after the cuſtome and uſage of every province and region.

But foraſmuch as our cauſe is for the title of a barony, a dignity never in uſe among the old Romans, and therefore out of their rules: We muſt ſeek for the antiquitie of that ſtate elſewhere than among them; by all reaſonable conjectures, barons ſeem to have been the chiefeſt captains and leaders of people, ſeeking habitation or conqueſt; which dividing among themſelves the country ſought by them, every man having juriſdiction within his own territory, did live together

Barons.

gether in that equality of dignity, either under a head, or without a head; for in all kingdomes and governments, there have ever been certain, as it were, pillars of the ſtate, for councel, government, aſſiſtance, and defence; which becauſe for the moſt part they were equal in authority, were therefore termed *pares regni*, *pares homines*, and more contractly *par homines*, and corruptly barons; by the converſion of the letter P into B, which two letters are often ſo changed one into the other, as purſe of burſe, and a libbard for a leopard.

The etymology of the word baron.

Such as the Italians call *baronni*, the French *barons*, and wee *lords*, the Dutch do term *fre-heren*, which ſoundeth in our language free lords, as having free territories, and juriſdiction within the ſame, whereof our court barons are lively repreſentations.

But from whence our word *lord* ſhould have his derivation, is ſomewhat more doubtful; yet by conjecture out of Burgundy, it ſeemeth we have borrowed the ſame; becauſe there, in old time, a free territory was called *alodium*, (which word to this day is in part retained) and the poſſeſſor of ſuch a territorie, called *alodius*, with us a lord. Lords.

Perſons of this degree (call them as you liſt) barons, freheres, or lords, were ever in great veneration, eſpecially in France; and it is thought by men of good judgment, that JULIUS CÆSAR, in his commentaries, by the word *regulus*, meant the barons of France, where, at this day, ſome barons contend by antiquitie of their baronies to have a place above new earles. Choppinus. Regulus.

In this realm all earldomes and baronies before the conqueſt by the Normans, were inheritances in fee ſimple, and deſcended to females, as well as to males; fee-tail is but a latter invention, for before EDWARD III's time there were not many of the higheſt and princely dignities entailed. Entail of honours when began.

The Conqueror, at his entry, ſuffered divers of the ancient barons to remain as he found them; ſome he gave entirely to his own nobility, and ſome to religious houſes; the dignity inſeparably abiding with the fee, by ſo ſtrong a conjunction, that biſhops, abbots, and priors thereby, together with the barony, received the dignity and ſtile of lord in common appellation and accompt, which otherwiſe were perſons incapable of thoſe ſecular titles, eſpecially abbots and priors: who neither uſed the ſtile of lords, nor yet were ſummoned to parliament as lords; if they were not endowed with baronies, as the words in the ſtatute of 15. EDW. III. expreſs, how in reſpect only of their baronies, abbots and priors owe ſervice in parliament. Abbots.

This ground well conſidered, there was no cauſe in ancient time to ſeclude women from ſucceſſion in earldomes and baronies, becauſe they are no parliament perſons, as ſome have alledged againſt them; for earls and barons were many years before there were any parliaments in this realm, in ſuch order, as is now obſerved of three eſtates, which, by common opinion, was firſt induced by king HENRY III. Parliament.

They erre therefore that make parliament the firſt maker of barons, when barons are rather the makers of parliament.

There be ancient tranſcripts of writs of parliament, which had the word baron in their direction, as, *Rex* JOHANNI *baroni de Dudley*, EDMUNDO *baroni de Stafford*, JOHANNI *baroni de Greyſtoke*, contrary to the form now obſerved, which a man may conjecture to have been uſed for a diſtinction between old and new barons; for in writs of creation, that is to ſay, of firſt ſummons, the King writeth, *Rex* JOHANNI STRANGE *de Knokin, militi*, or chevalier, naming his chief caſtle or mannor, which ſhall always afterwards ſtand for the head place of the barony, whereof the baron, and his heirs, ſhall be for ever ſurnamed and called; yea, although it ſo fall out, that the ſaid caſtle or mannor be aliened, ſold, or made away. See ante page 7, 8. to the ſame purpoſe.

And for the change of form, thus much may be alledged, as perfection of parliament had its commencement in HENRY III.'s days, ſo in his time almoſt all the ancient barons were waſted and conſumed, partly by tranſlating and advanceing of them into higher degrees, but ſpecially by the barons warrs, which began Barons warrs.

Writs.

began about the 46th year of his reign; ſo by decay of old, and by plenty of new creations, the writs of creation grew to be a precedent of ſummons, as well for the one as the other, as the like hath happened in divers other writs. That there was once ſuch diverſitie of writs, appeared not only by the ſight of the tranſcripts, but alſo by the records of the inſtitution and order of parliament, declaring how every earl and baron ought to come to parliament, and alſo their peers, which words make a plain diſtinction between barons already noted, and their peers which are to receive creation: An earl's peer in thoſe records is deſcribed to be ſuch a perſon as poſſeſſeth twenty knights fees, and a baron's peer, is he which hath thirteen knights fees, and one third part.

Now concerning the eſtate collated by writ, they are very farr from knowledge of cuſtomes and laws of chivalry, that affirm, that the dignity of a baron called by writ, doth not deſcend to his heir female, as well as heir male: For by the civil law, and all laws at this day, where dukes, earls, and barons, poſſeſs dukedomes, earldomes, and baronies, are *res patrimoniales*; and ſpecially that of a baron hath ever been, and ought to be inheretable; for it muſt be confeſſed, becauſe it cannot be denied, that the principal foundation and cauſe of a baron's creation is for the ſervice, which he that is created, and his heirs, are bound to do to the realm and Prince as a baron, and is enabled to perform by his poſſeſſions liable to that ſtate and vocation.

Regal eſtate.

And it ſhould be great injury to the crown and regal eſtate, having, from the beginning, (with diminution of it ſelf) departed with ſo many baronies unto ſubjects to want the honour and ſervice reciprocally due: Alſo it is greater detriment to the high court of parliament and realm to lack ſuch a member in every reſpect compleat for ſervice; than to the heir of the baron or huſband of the baroneſs, to ſit quietly at home unſummoned and uncalled; envy or diſdain may allow of this policie, but law and reaſon will never yield to it; the law civil rather rejecteth and unableth a nobleman (a hard caſe) by poverty unable to ſerve, than omitteth the uſe and ſervice of a man by law and nature ſufficiently qualified; and CASSANEUS writeth this ſentence, *Si illud ex quo cauſatur nobilitas tranſiit ad poſteros, ut regnum, ducatus, comitatus, &c. tunc in infinitum erit ille nobilis, ad quem tranſiit illa nobilitatis cauſa.*

Peer poor.

The care of the law for the conſervation of baronies, was greater in BRACTON's time than now it is; for the head mannor of a barony (if there were ſufficient beſides) could not be diſmembred by dower, for that it was the countenance of the baron; and the law hath been (and why may it not be ſo ſtill?) that if the King's baron having no iſſue but daughters, whereof the eldeſt being in his life time provided for, and beſtowed in marriage, ſhould dye, leaving the youngeſt of them unmarried, the King may diſpoſe ſuch daughter in marriage to any one of his knights, and ſhe and her husband ſhall enjoy the whole barony and dignity, the reſt having nothing.

Fitzherbert, Tit. præſcription. H. III.

By ancient monuments, of the inſtitution of parliament it appeareth, that when the number of barons decayed, ſuch as held twenty knights fees, and could diſpend after 20 *l.* for every fee, were perſons able to be called into parliament, if any man of leſs poſſeſſion had been called, he might have pleaded diſability; whereby we may perceive what care our elders had, for the preſervation of that degree, wherein the chief ſtrength of the realm is known to conſiſt, and upon the which, higher dignities have been founded and grounded.

Plea de diſability.

This barony of Bergavenny took beginning by writ; the writ created the perſon ſummoned to parliament, to be a baron which was none before; and ſo were the moſt ancient barons of this land created by writ, and not by letters patents; which manner of creation was not uſed in England before king EDWARD III.'s days.

Edw. III.

The material cauſe of the creation of new barons, as hath been ſhewed, is the ſufficiency of poſſeſſions, for the upholding of ſuch an eſtate, aſſeſſed according to the ancient cuſtome and conſtitutions of the realm; for wiſdom in a poor

man hath no maſter; but the efficient cauſe is the King's writ, or his letters patents; in the writ of ſummons the cuſtome of the kingdome is to be regarded; and in the letters patents the words are to be weighed.

A creation by writ is intended to work an eſtate of inheritance, in barons newly commanded to parliament, which in law is a fee-ſimple; for fee-tail is not an inheritance by the deviſe of the law, but of particular perſons; and therefore there had needs be words of entail in the writ, to alter the common courſe thereof, if the dignity ſhall be underſtood to paſs unto the males only, as once there was the like writ, and never but one that hath been heard of, directed to ſir HENRY BROMFLETE when he was created lord Veſcy, to him, and to his heirs males; having theſe words inſerted, *Volumus tamen vos & hæredes veſtros maſculos, de corpore veſtro legitime exeuntes, barones de Veſcy exiſtere, &c.* Teſte R. Weſtm. 24. Jan. anno 27. H. 6.

And becauſe in the writ implicative, there paſſeth inheritance, (as is before ſaid) to the party to whom it is directed, the ſame is to be intended fee-ſimple, unleſs the words are the ſame in force to the contrary. And ſo the dignity collated by writ, for default of males, paſſeth to the females, as fee-ſimple inheritance doth.

And here, by the way, it is to be noted, that their ignorance in the cuſtomes and lawes of chivalry is great; which affirm, that the dignity of a baron created by writ deſcendeth not unto his heir, and that his heir may not uſe the name or vocation, until he alſo be called by writ, and that then it becometh an inheritance, and not before this ſecond ſummoning of the ſon alſo; whereunto this may ſtand for anſwer ſufficient, If the dignity be extinct in the father by natural death, then the ſon indeed needeth a new creation; but by what reaſon ſhall a new writ of creation work a greater virtue of an inheritance in the ſon than it did before in the father himſelf? Object. Reſponſ.

If it ſeem an abſurdity, that the dignity ſo collated by writ ſhould be extended to the heir female, for that the original creation was for advice and council in parliament, a place denyed to that ſex. It is anſwered two ways; Why ſhould it ſeem more abſurd in England than in France and Spain, that a woman ſhould enjoy the ſtile and title of honour? And why may not a woman as well be a baroneſs, as to be counteſs marſhal, to be the King's champion, or to hold her land by knights ſervice? In reaſon, the ſex of the heir female ought no more to barr her of the dignity, than the nonage of the heir male ought to barr him, although, during his nonage, he be unable to yield the ſervice, it repugneth both to law and reaſon, that a baroneſs ſhould be deprived of her ſtate and dignity, which is parcel of her inheritance, becauſe ſhe is unfit to ſit in parliament, even as an infant King is not to be depoſed for his infancy, the law hath better conſideration both for the one and the other; for the King's infancy, by the ripe age of counſellors, and the woman's ſex by her husband's, is to be ſupplyed. Object. Reſponſ. Infant King.

And of this are many examples on record; JOHN of Gaunt, in the right of dame BLANCH his wife, the duke of Lancaſter's daughter and heir, was lord high ſteward of England, which, without all exception, is even the greateſt office in this realm: And by expreſs words claimed the exerciſe of that office at the coronation of king RICHARD II. as then being tenant by the courteſie of England of his wife's inheritance. And accordingly was he admitted and received, to do and exerciſe all that unto that office belonged. Lord high ſteward.

And at the ſame time JOHN DYMOKE claimed likewiſe, as tenant by the courteſy of England, to be the King's champion, and was admitted and received. King's champion.

Then alſo MARGARET, counteſs of Norfolke, daughter and heir of ſir THOMAS BROTHERTON, earl of Norfolke, claymed to be counteſs marſhal of England, as parcel of her inheritance unto her deſcended, and had licenſe to exerciſe the office by deputation.

Hereby it is manifeſt that the law permitteth women to hold their lands by knights ſervice, and grand ſergeantie; offices for that ſex more unfit, than place in a conſultation-houſe; for wiſdom by nature is not ſo much denyed them, as ability to perform their martial ſervices: But the law conſidering that theſe ſervices may be done by their husbands, as tenants in their right, reſteth ſo ſatisfied.

By like ſentence of law, in like caſe, the ſole daughter and heir of a baron, is enabled to ſucceed her father in dignity, no loſs than in the barony, which of right ſhall deſcend unto her, unleſs the courſe of the law be extraordinarily ſtopped and hindered: For dignities that are not annexed to offices, or annexed to bloud; and as a woman may be heir to lands holden in knights ſervice, or to a mannor, whereof the ſervice due is to be the King's champion at his coronation; becauſe the ſame law ſaith, ſuch a woman may have a husband to do that ſervice, which is reputed one body with her; ſo may the daughter and heir of a baron inherit the name, ſtile, and title, of her father's barony, both in reſpect ſhe is heir to her father, of the barony in the eye of the law, and for that ſhe may take an husband to ſupply the ſervice in parliament, and elſewhere.

Though man in his ſex be more excellent than woman, yet in quality we ſee women often to excell men, and therefore no reaſon is there to bar them of their right, eſpecially when the commonwealth thereby taketh no detriment, as in this caſe it does not; and therefore none of ſound judgment will affirm, that women are not capable of baronies, earldomes, dukedomes, and kingdomes, where the manner of gift, the laws and cuſtomes of the countrey enable them; and that likewiſe they may not tranſport and convey them to their iſſue and poſteritie.

And where the law ſuffereth the inheritance of the barony, to deſcend to a woman, which may ſerve by a husband, and have a ſon to ſupply the place for her, it were ſmall policy to deny the ſtile and dignity, thereby to looſe the ſervice and ſtate of a baron in the commonwealth; for ſo ſhould there have been but few barons at this day, they, for the moſt part clayming from women.

It is no ſtrange thing that one may enjoy title of dignity, by the law of chivalrie, and yet be no peer or baron of parliament, nor capable of thoſe privileges by that title, as do the children of dukes and earls; if a duke's ſon may have the title of an earl, without the earldome; and the ſon of an earl the name of a baron, without the barony, the earldome and barony yet remaining in the fathers, only for that they are heirs apparent (which to common law ſeemeth repugnant) of greater right the daughter and heir of a baron ought to enjoy, the name and title of her father's barony; if ſhe ſhould not, the commonweal thereby ſhould take great detriment, which hath been chiefly upholden by the ſtate of barons; the decay of which ſtate, would be the decay of the ſtate publick, as hath been before declared. Therefore to ſtop this ancient courſe of containing ancient baronies, is to feeble the ſtate, and to abandon a fortification well builded, which is eaſilier kept, than a new erected.

Surely king HENRY VIII. of moſt famous memory, would never have created the Queen's Majeſtie's mother, marchioneſs of Pembroke, (as before time his noble progenitors have done the like) but that he as well underſtood the common law, as the law of chivalry; to hold women capable of ſuch dignities in their own right, and ſo their iſſue after them.

If the common law were ſuch, that the barony might not deſcend to the woman, there might be ſome colour to bar her of the dignity; yet very hard dealing would it be, and contrary to the law of nature and nations, which permit children to be beautified with their parents nobility, purchaſed by worthy deſerts.

For which conſideration, in Germany all princes children, of both ſexes, bear the names and dignities uſed by their parents; but we, whilſt we contend to be wiſer than our anceſtors, bewray our own ignorance, allowing to women capacity of the barony and not of the dignity, which is to ſtrain at a gnat and ſwal-

low up a camel; the reasons are manifold, which the law hath to warrant it self against this error.

By the civil law, if the Emperor signifieth his bare pleasure, that he will have any person to be a gentleman, which is none, without mention of his heirs, yet that quality shall be interpreted to reach to his children of both sexes; *Quia nobilitas politica est hæreditaria.* This being so, it should be a very hard construction, to make the heir of a baron of worse condition than the heir of a new gentleman.

Our fathers considering that none are born wise and vertuous, and that daughters are no less natural children than sons, in defect of sons received them to right of inheritance partly for that it is not denyed to women to be wise and vertuous, and partly for that a man may chuse a weak daughter to a wise son-in-law, for his own comfort, and for the service of the commonweale, whereas a son must be received with all his imperfections, as it pleaseth nature to frame him. Women.

And above all others, our laws are most tender in that behalf, so much, that at the first face, they may seem rather to grant absurdities, than defend equities; for they admit women to tenures by martial services, which nature seemeth to deny to their sex, but they salve the same with privilege and liberty of deputation.

This privilege some have confounded by a distinction, not rightly conceived, perversly interpreting the purpose and ground of the law; as thus generally women may hold lands by such services as are corporal, and must perform them by deputation, but are prohibited to hold lands, by any service of wit, and barred in that behalf to make deputation.

For such is their meaning that make that their reason, why women should not succeed in their father's baronies, because they may not sit in the high court of parliament, there among the other barons and peers of the realm, to give their advice, assent, and consent, in the weighty affairs of the realm, which interpretation maketh that law most monstrous, which is of it self most reasonable.

For it is manifest, that this privilege and dispensation, is meant specially in the favour of women, and to preserve their right of inheritance: Now if the law so much favoureth their case, that although in common understanding it seemeth monstrous, for a woman to be a countess marshal of England, or to be the King's champion, and for that consideration, and to save their right of inheritance, yieldeth unto them privilege of deputation, how then can it be wrested, that the same law should not intend like privilege to them in services of wit, not denyed to their sex, either by the law of God, nature, or nations?

The true meaning therefore of that distinction, is to declare women incapable of inheritance, in publick and meer judicial offices, for otherwise there may be services which a woman, in her own person, may do, and services of wit, which she may execute by a deputy.

For in case there were a tenure to make, or wash, the King's shirt, that he should wear the day of his coronation; this being a corporal service may be done by a woman. Or to make an oration in the new King's commendation, a service of wit, the same also may be personally performed by a woman, as well as by deputation.

Also look into the services beforementioned, and you shall find, that to be a King's champion requireth more than a bull's body, it needeth also a serpent's head. But to marshal the field, to be judge of marshal causes, and of cases of chivalrie (all incident to that office) is a service that requireth more than ordinary understanding; nevertheless the law denieth not, but a woman may hold by that tenure, and use deputation.

A woman, lady of a mannor, hath, in her own right, the jurisdiction of a court baron, and the same kept by her own name, and ministreth justice by her deputy. Lady of a Mannor.

The law pronounceth the husband and the wife to make but one body; then in the eye of the law, the service done by the husband for the wife in

parliament,

parliament, is done by an able perſon, and the ſame the right tenant; and in reaſon is not the court better ſerved with the preſence of her husband, than with the proxie of a baron abſent?

That husbands, in right of their wives, have likewiſe enjoyed their ſtiles and titles of dignity, as well as their other inheritances, ſhall be plentifully proved in the end of this treatiſe, by great numbers of examples and precedents, of ſuch as have been ſo enabled; whereof one moſt notable and very ancient, teſtified by the letters of ALEXANDER III. king of Scots, directed to king HENRY III. of England, and mentioning the law of the land, in that behalf, by expreſs words, is well worth the recital in this place, and is after this manner.

EXcellentiſſimo principi, & patri in Chriſto, chariſſimo domino HENRICO, Dei gratiâ, illuſtri regi Angliæ, domino Hiberniæ, & duci Aquitaniæ: ALEXANDER eadem gratiâ rex Scotorum, ſalutem, in ipſo qui dat ſalutem regibus; cum NICHOLAUS DE BOLTEBY baro veſter, per legem Angliæ, ratione prolis, quam idem NICHOLAUS procreavit de PHILIPPA filia & hærede ADÆ DE TINDALL, qui eandem baroniam cum libertatibus, & conſuetudinibus & omnibus aliis juribus, & pertinentiis ſuis de vobis tenuit; & ADAM DE BOLTEBY filius & hæres prædictæ PHILIPPÆ, de baroniâ prædictâ, coram vobis venerit, & vobis intimaverit quod WILLIELMUS DE SWYNBURN, ratione villæ de Staworth, quæ eſt infra libertatem noſtram de North Tindal, & quam tenet hæreditare, cujus villæ tenentibus anteceſſores prædictæ PHILIPPÆ, conceſſerunt liberam communam infra communam, manerii ſui de Langley, ſicut prædictus ADAM, filius & hæres prædictæ PHILIPPÆ, vobis intimavit, quod eſt infra comitatum Northumbriæ, & caput baroniæ prædictæ, & quod de vobis tenetur in capite, &c. Nos vero petitioni veſtræ adquieſcentes, &c. Teſte meipſo apud Kynroſs, 7° die Januarii anno regni noſtri xxiii.

The law of England in this caſe, enabling the husband, *Ratione ſuſceptæ prolis, inter ipſum, & uxorem hæredem*, was never yet gainſaid in any King's days, 'till in the reign of king HENRY VIII. when as Mr. WIMBISHE took upon him the ſtile of lord Tailbois, in the right of his wife, having had no iſſue by her. At what time, for the avoiding of two great inconveniencies, the King aſſiſted both with the civil and temporal lawyers, gave ſentence, That no man, husband of a baroneſs, in her right, ſhould uſe the title of her dignity, untill he had by her a child, whereby he ſhould become tenant by courteſie of her barony; for then, by the ſame law of England which gave him title to the barony, he had alſo title to the dignity, as parcel of the ſame inheritance; and ſo ſhould be baron by permiſſion and imputation of law, and not otherwiſe but by ſpecial ſuit or favour of the Prince.

Lord Tailbois.

The inconveniences hereby avoided are theſe: Firſt, The husband that could not claim, by courteſie of England, the barony, ſhall not, without offence committed, be to day a lord and to morrow none, as it might happen if his wife ſhould dye before him, which honour ought not to be ſubject to ſuch mutation. And the other inconvenience hereby avoided is this, That the ſon of him that is tenant by courteſie, ſhall not, after the deceaſe of his mother, ſo dying before his father, be a lord without lands, as he ſhould be during his father's life, unto whom, by the courteſie, the lands are due: Both which inconveniencies ſhould happen, if the husband, not being tenant by courteſie, ſhould take upon him that ſtile, which, after his wife's death, immediately he ſhould be fain to lay it down.

And again, if tenant by courteſie ſhould not uſe it, then the heir ſhould be lord without lands; therefore the King's doom was righteous and wiſe, that only tenant by courteſie ſhould take it upon him; for that the dignity being parcel of his wife's inheritance, wherein the husband hath eſtate for term of life, *ratione ſuſceptæ prolis*, of conſequence ſeemeth to belong unto him.

If

If tenant by courteſie being called by writ to ſerve in parliament, in reſpect of his wife's right, refuſe to come, he is to be fined as a lord of parliament; but if a perſon, having no baronie by courteſie, deſcent, or letters patents, be called and come not, ſuch a one is not puniſhable for his default, in reſpect of omitting his ſervice of a baron, but for contempt, if he have fees ſufficient, otherwiſe he may diſable himſelf.

And the calling of tenant by courteſie to parliament by writ, tendeth not to a new creation, but to an acceptation and confirmation only; for he ſhall there take ſuch a place, as his wife's anceſtors held and enjoyed.

If any will contend and ſay, that the husband of a baroneſs, by whom he hath iſſue, that maketh him tenant of her inheritance by courteſie, may not uſe her ſtile, untill he be called by writ, uſe and daily experience will condemn him: For by collation of times, at the day of the baron's death, the ſpace between that and the next parliament, the uſe in the mean time of the ſtile by the husband, ſo tenant by courteſie; this doubt will be ſoon reſolved.

If the Prince, by wrongful and ſiniſter information, prohibiteth the husband of a baroneſs, tenant by courteſie, to uſe the ſtile of his wife's barony; and he to ſatify the Prince obeyeth, yet right remaineth right.

Earl of Kent forbid to uſe his title.

As king HENRY VIII. wrong incenſed of ſir HENRY GREY of Wreſt, would not permit him to uſe the title of earl of Kent, due unto him by the entail of the dignity to the males, at the firſt creation of his anceſtor. Queen ELIZABETH, his daughter, well inſtructed of the right, ſuffered REIGNOLD, his nephew, to take it upon him.

Prince's acts.

As Princes acts though they be *præter legem* are tolerable, ſo if they be *contra legem*, they are not a derogation or extinguiſhment of law, but a lett to the effect.

And for an example in this barony of Bergavenny, ſir EDWARD NEVILL that married ELIZABETH, the ſole daughter and heir of RICHARD BEAUCHAMP earl of Worceſter, and lord of Bergavenny, having by her a ſon, GEORGE, born unto him in anno 19. HENRY VI. forthwith wrote himſelf, and was of all men reputed, taken, and called, lord of Bergavenny, although he were not ſummoned, and called to the parliament by that name, until the twenty ninth year of that King's reign, which was ten years after his being tenant by the courteſie.

If any man will ſay that the ſaid ſir EDWARD NEVILL was not lord of Bergavenny in his wife's right, but that the writ of ſummons made him baron (which is eaſily proved falſe, becauſe it is to be proved, that he was lord and baron of Bergavenny long before he received any writ) then his place in parliament ſhould have been inferior to all of that time, as it was not.

And there is no reaſon but that the husband ſhould uſe the title of his wife's barony, before the writ of ſummons be directed unto him, as well as after; ſeeing that the writ doth ſerve no further than for confirmation of his wife's rights; for as ſhe immediately after her anceſtor's death, ought to be called, reſpected, and taken, as a baroneſs; ſo her husband, ſo ſoon as he hath had iſſue by her, making him tenant of her barony, by the courteſie of the land, is alſo inveſted in the dignity in her right; or elſe neither the ſon and heir of a baron ſhould uſe the title of his father's barony, after his deceaſe, untill he be called by writ, neither claim the benefit of tryal by his peers, and ſuch other priviledges as are due unto that eſtate.

But nothing more plainly diſcuſſeth this caſe, than doth the conſideration of abbots and priors in times paſt, whereof ſome were called lords, and came to the parliament; and ſome others were not called lords, neither came to the parliament. For it is manifeſt, by the ſtatute of 15. EDW. III. and by the precedent for the order in parliament, that thoſe among them which were ſummoned, and called to parliament, were in reſpect of their baronies, and not of their eccleſiaſtical vocation; for in that reſpect they have their place only in the convocation houſe; and ſuch an abbot of parliament, choſen immediately upon the death of his predeceſſor, was called lord abbot in the right of his abbey, endowed with

a barony, without tarrying for a writ of ſummons to make him lord; ſo it is alſo with biſhops, and *per conſequent* with all ſuch husbands as are tenants by the courteſie of their wives baronies.

Biſhops.

Calling by writ, or not calling, neither addeth, neither taketh away, where a former right is; for then the Prince omitting, upon ſome juſt conſideration, to call a baron by writ, at ſome one parliament, ſhould thereby extinguiſh his title.

It being thus moſt clear and certain, that a barony firſt eſtabliſhed by writ, with the name, ſtile, title, and dignity thereof, ought to deſcend to the ſole daughter and heir of ſuch baron, as ſhall have no iſſue male of his body, and from her to her husband, that ſhall be tenant of her inheritance by the courteſy; and to her ſon, as by long practice and cuſtome from all antiquity, and by examples and precedents is fully hereafter proved; whatſoever ſhall be objected againſt it, muſt needs prove to be meer cavillation againſt received cuſtome, law, and equity.

Howbeit, becauſe in the caſe now in queſtion, it is objected againſt the heir general, that the barony of Bergavenny is an ancient barony, the owners and poſſeſſioners whereof, have ever had the name and title of honour together with the poſſeſſion of the caſtle and lordſhip; although the ſame have been transferred to ſundry families, one of them not being heir to the other; and for that cauſe is thought to reſemble the caſtle of Arundel, which maketh the owner and poſſeſſioner thereof earl of the place, *Ratione poſſeſſionis caſtri, manerii, & dominii de Arundell, abſque ullâ aliâ ratione vel creatione in comitem*, for ſo ſaith the record. Before we lay forth the examples ſo often promiſed, it ſhall be requiſite, that anſwer be firſt made to the ſaid objection, the better to ſatisfy the reader in that behalf; which otherwiſe peradventure might be moved to think that aſſertion true, which indeed is altogether falſe, as here at large ſhall be declared.

Anſwer to the conceipt, that the caſtle and lordſhip of Abergavenny ſhould draw the ſtile and dignity.

The caſtle of Bergavenny, (as ancient monuments and writings make mention) was builded by the firſt lord of that territorie, called Over-went or Wentland, in Monmouthſhire of Wales, after the conqueſt by the Normans, whoſe name was HAMELIN DE BALUN, and that in a place where before time one called AYRES had builded a ſtrong fort, or hold. This HAMELIN living throughout the Conqueror's days, and drawing towards the latter end of his own, in the time of king WILLIAM RUFUS, and that without iſſue of his body begotten, in diſpoſing of his poſſeſſions, gave his lands of Over-went, wherein his ſaid caſtle of Bergavenny was builded, to BRIAN, or BRIENTIUS, his nephew, the ſon of his ſiſter LUCIE, that was counteſs of the iſle.

HAMELIN DE BALUN firſt builder of the caſtle of Abergavenny.

This BRIENTIUS, called by ſome BRIENTIUS DE INSULA, and by other ſome BRIENTIUS DE WALLINGFORD, by reaſon of the inheritance of MAUD his wife, that was heir to one WYGOD of Wallingford, a great baron, and widow unto MILES CRISPIN, had iſſue two ſons, which were ſtricken with leproſie; beſtowing them therefore in the priory at Bergavenny, which was alſo of his uncle's foundation, he undertook, in his own perſon, a voyage into the Holy Land, where he ended his daies, leaving his lands of Over-went, and Bergavenny-caſtle and lordſhip, to one WALTER of Glouceſter, his couſin, at that time high conſtable of England: The ſon of this WALTER, called MILES, whom king HENRY I. created earl of Hereford, by his wife, the heir of Brecknock, had five ſons, which dyed all without iſſue, and three daughters, between whom the whole inheritance was after divided.

Earl of Hereford.

Three daughters.

Howbeit the ſtory ſaith, that WALTER of Glouceſter, in the life time of MILES his ſon, gave the lands of Over-went, with the caſtle and lordſhip of Bergavenny, unto HENRY of Hereford, the ſecond ſon of MILES, which he held

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in the dayes of his grandfather, and father, and likewiſe of earl ROGER his elder brother, unto whom, in proceſs of time, he ſucceeded as heir, in all the other inheritances. Who was after ſlain near Caſtle-Arnold in Over-went, by one SEYSILL AP DUNWALL, whom the ſtory termeth (*ſatelles*) a man of the guard, or a man at armes. Satelles.

HENRY FITZ-MILES thus ſlain, and all his other brethren dying without iſſue, all the lands of Hereford, together with the office of the high conſtableſhip of England, were divided among the three ſiſters, MARGERY, BERTA, and LUCY; but the lands of Over-went, wherein Bergavenny ſtandeth, were by king HENRY II. betaken to the cuſtody of one SEISILL AP YAGO, of the Welch bloud, whom the ſaid SEISILL AP DUNWALL ſlew, with his retinue of three hundred men, kept for the defence thereof. Conſtableſhip.

Hereupon the King ſent thither ſir HUGH BEAUCHAMP, a valiant knight, with fourteen thouſand men to ſuppreſs the contumacy of this rebel, and to recover all Wentland, which were all taken and maſtered by the ſaid SEISILL AP DUNWALL, and carried away into the woods; yet, becauſe he was ſhortly after contented to deliver, and ſet them all at libertie, the ſaid ſir HUGH BEAUCHAMP was moved to make his peace with the King.

Hitherto, in all this narration faithfully made, according to the truth of the hiſtory, what is there to be found, that ſhould move any to think, that the poſſeſſion of this caſtle of Bergavenny, hath ennobled the poſſeſſioners ſo far forth, as to make them barons?

Theſe hitherto named, may as well (nay rather more truly) be called lords of Wentland than of Bergavenny, ſith both the one and the other paſſed joyntly together in a bloud, to thoſe of the houſe of Hereford inheritably increaſing their poſſeſſions, but not their ſtiles, who indeed were, in their times, all of them men of great power and ability, by reaſon of the greatneſs of their territory and revenue. No addition of Bergavenny in the ſtiles of the earls of Hereford.

For it is written of WALTER the conſtable, that he held in his cuſtody the caſtles of Glouceſter and Hereford; and that his ſon MILES, being created earl of Hereford, had given unto him by king HENRY I. the whole foreſt of Dene, beſides the land and territory of Brecknock, which he had by his marriage, being all great things.

They therefore that in this rehearſal, do behold any extraordinarie kind of ennobling by the poſſeſſion of Bergavenny lordſhip, here ſhuffled in among divers other great ſeigniories, have more than an ordinary inſight in things; unleſs they gather that SEISILL AP YAGO, and after him SEISILL AP DUNWALL the rebel, were lords of Bergavenny, becauſe for a time they ruled in Wentland, and had the lordſhip and caſtle of Bergavenny in their hands.

As for ſir HUGH BEAUCHAMP, although it be ſo, that he had to do there, by the King's commandment, as a truſty ſervant of his, to withſtand the incurſions of the Welſh men then unrulie; yea (which is more) although in the time of his government there, he confirmed to the monks of Bergavenny, for his charter, all ſuch poſſeſſions as HAMELIN DE BALUN, and BRIAN the earl's ſon (whom he calleth *anteceſſores ſuos*) and the other lords of Bergavenny, had before given them in free almes; yet is not that enough to prove that he was lord and baron of the place. Confirmed to the priory of Bergavenny by BEAUCHAMP.

Therefore to come to our purpoſe, we muſt continue our former narration, and returning where we left, to the three ſiſters before mentioned, trace out the ſteps of our true lords of Bergavenny, which by their deſcent and birthright, enjoyed both the lands and dignity.

The eldeſt of theſe ſiſters called MARGERY, was married to ſir HUMPHREY DE BOHUN, to whoſe ſhare in the partition, fell the honour of Hereford, and the office of the conſtableſhip of England.

The ſecond, BERTA, was married to ſir WILLIAM DE BREWSE, lord of Bueld, or Buelt, and ſhe brought with her the lordſhip of Brecknock, and the land of Over-went, which containeth the caſtle and lordſhip of Bergavenny. BERTA's purparty carried Bergavenny.

Lucia. And Lucia, the third ſiſter, was married to Herbert Fitz-Herbert, for her portion taking the foreſt of Dene, and other lands in England.

Lord of Brembre. Sir William Brewse, the husband of Berta, was a mighty man of lands and poſſeſſions, before he married her, for beſides the land of Buelth in Wales, he was alſo lord of Brembre in Suſſex, with the whole rape and caſtle, which at that time, was of it ſelf, a ſtately barony. And being now by her poſſeſſed of the lordſhips of Brecknock and Over-went, including Bergavenny, he encountred with the ſtout rebels Seisill ap Dunwall, and ſlew both him and Geffrey his ſon, within the lordſhip of Bergavenny, *anno Domini* 1175, which was the twenty ſecond year of Henry II.'s reign; who, by his wife Berta, left his ſon and heir William, that was by king John afterward baniſhed the land: This man, in his wife's right, by the courteſie of England, and his ſon after him, in her right alſo, might rightly have entitled themſelves lords of Bergavenny, if they had been ſo pleaſed; but having a far greater ſeigniory, as that of Brecknock was, no marvel it is, though in them, and their male iſſue, lords of Brecknock, the title and ſtile of Bergavenny lay hidden, as it did alſo all the days of Reignold, this later William's ſon, and of William, the ſon of the ſaid Reignold, who wrote themſelves lords of Brecknock only, as appeareth by ſundry charters, deeds, and evidences of theirs, yet extant.

Three daughters. The laſt William lord Brewſe of Brecknock, being ſlain by Lleweline, Prince of North Wales, in *anno* 1230, the fourteenth year of Henry III.'s reign, left all his lands, and large poſſeſſions, to be divided among his three daughters, Maud, Eve, and Eleanor, for his fourth daughter Isabel, though married to David, the ſon of prince Lleweline, had no iſſue.

Maud was married to ſir Roger Mortimer lord of Wiggemore, taking for her portion, of her father's inheritance, the land of Radmore-St.-Cleer, Amgoit, Pelyneog, Nerbod, Kingſtone, Burgh-Walter, and Withfray, owing for thoſe lands *ſect of court* to the county of Kermardyn.

Eve married to Cantelupe. Eve was married to ſir William Cantelupe, and had for her portion the lands of Over-went, Bergavenny, and Kilgarran.

Eleanor was married to ſir Humphrey de Bohun, the earl of Hereford's ſon and heir, and had the lordſhips of Brecknock and la Haye, with divers other lands.

Cantelupe comes in by partition. Now are we come to the point of greateſt difficulty, whereof chiefeſt hold is taken; becauſe in the partition the honour of Bergavenny cometh to ſir William Cantelupe's ſhare, whom thereupon we behold advanced to the eſtate and dignity of a baron, and to bear the ſtile and dignity of Bergavenny: Hear all, and then judge. True it is that unto ſir William Cantelupe, for the purparty of Eve de Brewse his wife, was aſſigned the caſtle and lordſhip of Bergavenny, with the appurtenances thereunto belonging, as of the inheritance of Brewſe, together with other lands in England, which fell to her purpartie, as well of the marſhals lands (which was the lordſhip of Kilgarran, and other lands in Ireland, and elſewhere) as alſo of the lord Brewse's lands, whereunto alſo the Brewses were part heirs. Theſe inheritances were great, and did far ſurmount the portion aſſeſſed in the record of inſtitution of parliament, for a baron's livelyhood; and therefore what marvel is there, if together with ſo great an ability, to furniſh out the ſtate of a baron, it pleaſed king Henry III,

Cantelupe Lord Bergavenny. to create ſir William Cantelupe lord of Bergavenny, by his writ of ſummons to parliament, by the name of William Cantelupe of Bergavenny, chevalier, as by the name of his chiefeſt mannor and ſeigniory? can it be therefore gathered, that the caſtle, mannor, and lordſhip it ſelf, did create him baron and peer of the realm, by reaſon of the poſſeſſion, without any other form or circumſtance? ſurely none of any reaſonable judgment, can ſo think thereof.

And ſomewhat to ſtay their opinion, it is to be remembred, in the behalf of this our ſir William Cantelupe, that if the heralds books be well ſought, it will there be found, that he was no upſtart, but of an able and an ancient ſtock, and himſelf head and chief of his family.

For his grandfather ſir WILLIAM CANTELUPE, a famous knight, was the firſt founder of the nunnery of Ikelington, or Ikelton, in Cambridgeſhire; His aunt, the lady EUFEMIA, ſiſter to his father, the ſecond ſir WILLIAM CANTELUPE, was counteſs of Oxford; and his younger brother, ſir NICHOLAS of Cantelupe, was, by his marriage, lord of Ilkeſton and Selleſton in Nottinghamſhire, whoſe nephew founded there the priory of Greſley. CANTELUPE's deſcent.

And ſuch was the port and fame of this our ſir WILLIAM, the third of that name, that it may be thought he was one of the barons and peers of the realme, before this marriage of his; although it cannot ſo readily be ſhowed, what title of dignity he had, or whether the ſame came to him by deſcent from his anceſtors or not.

This our ſir WILLIAM CANTELUPE begot on his lady and wife, a ſon and two daughters, and left this life in the year of our LORD GOD 1254, being the thirty eighth year of the reign of king HENRY III.

The ſon called GEORGE ſucceeded his parents in lands, honour and dignity, and married the earl of Lincoln's ſiſter, but left no iſſue, ſo that the inheritance fell unto the two ſiſters; JOAN, that was married unto ſir HENRY of Haſtings, and MILICENT married to EUDO LA ZOUCHE, the younger ſon of ALANE lord Zouche of Aſhby.

Here again great advantage is taken for the proof of this barony to reſemble Arundel caſtle, becauſe in the partition of GEORGE lord Cantelupe's lands, his ſiſter JOAN, having for her part of his inheritances the land of Over-went, and the lordſhip and caſtle of Bergavenny, doth thereby convey the ſtile and title of Bergavenny into her husband's family; whilſt the younger ſiſter contenteth her ſelf with the caſtle of Totteneſs, Heydon, and Haringeworth, to her allotted, among other aſſignments, for the full of her purparty; but in truth, all circumſtances conſidered, it will appear none advantage at all toward the furtherance of this aſſertion. Arundel.

For this ſir HENRY HASTINGS, husband to JOAN CANTELUPE, was baron and peer of the realm, before he married her, carrying the ſtile and title of his own ſurname of HASTINGS, for the name of his dignity; whoſe anceſtors, from the conqueſt of England, had been men of great poſſeſſions, and officers to the crown, called *diſpenſatores Regis*, holding lands in Aſheley in Norfolk by that ſervice of grand ſergeantie, whoſe mother ADA, one of the earl of Cheſter's four ſiſters and heirs, brought with her, for her fourth part of that earldome, no ſmall portion of inheritance. HASTINGS. Aſhley.

He himſelf departed this life before the lord CANTELUPE, his wife's brother, leaving his ſon and heir, JOHN lord Haſtings under age, during whoſe minority ZOUCHE's wife, MILICENT, his aunt, ſerved out her purpartie of the CANTELUPE's lands; and after partition made thereof, his portion, during his nonage, was by the King committed into the cuſtody of divers perſons; queen ELEANOR, the King's wife, had ſome of it, and others had the keeping of other parts of his inheritance; howbeit Bergavenny and Kilgarran were betaken to the cuſtody of one HENRY BRAY, a clergie-man, who kept them for a good ſpace, till the time that ſir WILLIAM of Valence, earl of Pembroke (whoſe daughter this young lord HASTINGS had eſpouſed) did obtain the cuſtody of them at the King's hands, during the reſt of the time of his minority. Sir WILLIAM VALENCE.

And ſo had the ſaid WILLIAM DE VALENCE earl of Pembroke, the wardſhip of the ſaid young lord HASTINGS, and the cuſtody of his lordſhips of Bergavenny and Kilgarran, for the ſpace of one year and ſomewhat more; for the which time, becauſe poſſibly it may be proved, that in ſome place, where all his honours and titles are, for his memory, recounted, this of Bergavenny is reckoned up among the reſt: It is alledged for the proof of this aſſertion, that the poſſeſſion of that caſtle and ſeigniory, did enoble him, and ought in like manner to enoble the preſent owner and poſſeſſioner thereof. As well might the before-named HENRY BRAY, clerk, have written himſelf lord of Bergavenny alſo, whilſt he had the cuſtody thereof: But with how little reaſon that al-

legation is made, every body may ſoon perceive, that will conſider with themſelves, how always it hath been the cuſtome of poſſeſſioners and owners of private mannors to write and entitle themſelves, lords of thoſe mannors and places; as lawfully they may, ſo long as they take themſelves to be *domini proprietarii* of them, *& non honorarii*; that is to ſay, lords by propriety, but not honourable barons; as for example to be ſhewed in that behalf: THOMAS SMITH of the county of Kent, eſquire, is owner and poſſeſſioner of an ancient mannor in that county called Oſtenhanger, which is ſaid to have been the head mannor of a very ancient barony in times paſt: If he ſhall write himſelf in his evidences lord of the ſame mannor (as rightly he may, becauſe he is ſo indeed) it doth not thereof follow, that he thereby is enobled to the ſtate of a baron.

Smith lord viſcount Strangford's anceſtor.

In this JOHN lord Haſtings, the ſon and heir of HENRY lord Haſtings and dame JOAN CANTELUPE, and in his poſterity, for five generations together, the name, ſtile, and title of this barony of Bergavenny, hath been, as it were, hidden, covered, and raked up, under the ſtile of the barony of Haſtings, and under the great honour of Pembroke earldome, whetewith LAURENCE lord Haſtings, this man's nephew, was firſt adorned. If peradventure any of them, at any time, wrote himſelf, or were called by the title of Bergavenny, that was after Haſtings in this ſort, *dominus* HASTINGS *de Bergavenny*, as of one of their principal caſtles or mannors, and not otherwiſe.

Bergavenny title hidden.

Dominus HASTINGS de Bergavenny.

From them by deſcent and bloud, the males of HASTINGS failing in Pembroke line, the caſtle and lordſhip of Bergavenny, according to the courſe of the common law, paſſed among the other inheritances to ſir REIGNOLD lord Grey of Ruthin, found by inquiſition to be next couſin and heir of the whole bloud, unto the laſt earl of Pembroke, lord Haſtings, Weisford, and of Bergavenny: Of whom ſir WILLIAM BEAUCHAMP, the earls of Warwick younger ſon and brother, purchaſed the ſaid caſtle, mannor, and lordſhip of Bergavenny, and was by king RICHARD II. created lord and baron thereof, by his writ of ſummons to parliament, as hath been often before in this claim declared; in whoſe offspring and poſterity, the ſame honour and dignitie hath been honourably and proſperouſly continued for ſeven deſcents and generations; and at this preſent rightly reſteth to be continued for many more, in the perſon of dame MARY, the ſole daughter and heir of HENRY, the laſt lord of Bergavenny, wife to ſir THOMAS FANE of Kent, knt. who, by the courteſy of England, is tenant of all her inheritances, poſſeſſions, and titles.

Although it may be proved that the ſaid caſtle and lordſhip of Bergavenny, by reaſon of ſundry entailes and conveyances in law, hath paſſed thorough divers hands, and hath had ſundry owners ſince it came into the poſſeſſion of the foreſaid ſir WILLIAM BEAUCHAMP, as ſometime in the hands of RICHARD BEAUCHAMP, earl of Warwick, after the death of JOAN, wife of the beforenamed ſir WILLIAM BEAUCHAMP lord of Bergavenny, by force of an entail made of the ſaid caſtle and lordſhip to the ſaid JOAN his wife, and the heirs males of the body of the ſaid ſir WILLIAM BEAUCHAMP, with remainder for default of ſuch iſſue, to the heirs males of THOMAS earl of Warwick, elder brother to the ſaid ſir WILLIAM.

After the death of the ſaid RICHARD earl of Warwick, ſon of earl THOMAS, the ſame caſtle and lordſhip by force of the entail, deſcended to HENRY BEAUCHAMP his ſon, that was after duke of Warwick, and from him, after his deceaſe, the ſame deſcended unto ANNE, the ſaid duke's ſole daughter and heir, though wrongfully and expreſly againſt the form of the entail, yet detained from the right heir, during the minority of the ſaid ANNE, who dyed without iſſue.

Duke of Warwick.

RICHARD NEVILL, the great earl of Warwick and Salisbury, marrying ANNE, the ſiſter to the ſaid duke of the whole bloud, did afterward, in her right, poſſeſs the ſame caſtle and lordſhip of Bergavenny, during his life, till he was ſlain at Barnet-field; and it is not unlikely, but that in his ſtile, he did alſo uſe the title thereof.

And

And after him GEORGE duke of Clarence, and RICHARD duke of Gloceſter, brethren, and his ſons in law, ſucceſſively had the like poſſeſſion, one after another, as in the right of their wives, the ſaid earl's daughters and heirs; which duke of Gloceſter afterward uſurping the kingly ſtate; when as king HENRY VII. had by his deprivation obtained the kingdom, he beſtowed that caſtle and lordſhip upon his Uncle JASPER, whom he had newly created duke of Bedford; by whoſe death without iſſue, the ſame returning again to the crown, was by king HENRY VIII. reſtored unto GEORGE NEVILL lord of Bergavenny, the ſon of GEORGE lord of Bergavenny, as unto the true and rightful heir, upon a petition of right by him, the ſaid GEORGE, exhibited to the King, declaring how RICHARD NEVILL earl of Warwick, had wrongfully diſſeiſed, ſir EDWARD NEVIL lord of Bergavenny, his grandfather; and how by that diſſeiſon the ſaid caſtle and lordſhip had been, by the heirs of the ſaid earl, wrongfully withholden and detained from the right heirs of the foreſaid ſir WILLIAM BEAUCHAMP lord of Bergavenny, that firſt made the entail: Which heirs, notwithſtanding the want of the poſſeſſion of the ſaid caſtle and lordſhip in all this mean time, have always been ſummoned, and called to the parliaments holden in their dayes, as lords and barons of Bergavenny, and for ſuch have been eſteemed, reputed, and taken during their lives.

RICHARD the uſurper.

HENRY VIII. reſtores Bergavenny to GEORGE NEVILL.

Although as is ſaid before, all this be true, and cannot be denyed, yet doth it not prove their purpoſe and intent, which hold and affirm the poſſeſſion of this caſtle and lordſhip of Bergavenny to be able to create the owner and poſſeſſor thereof a baron, which was none before, as it is ſaid of Arundel-caſtle, which maketh the owner thereof earl of Arundel; this is it which hath blinded them which be of that opinion, becauſe they have ſeen ſome of the poſſeſſioners of Bergavenny-caſtle and lordſhip, among their other ſtiles of dignity, to write and entitle themſelves lords thereof; which whilſt they poſſeſſed they might do, *tanquam proprietarii domini illius caſtri & dominii; ſed non tanquam domini honorarii*; becauſe it is moſt certain and true, that if they had been gentlemen, that ſo held the poſſeſſion, and not earls, and poſſeſſed of great and noble eſtates as they were, that poſſeſſion of theirs ſimply, without writ of creation, or letters patents from the Prince, could never have made them barons and peers of the realm.

Arundel.

If it ſeem ſtrange, that this dignity of Bergavenny, ſhould be now ſeparated from the caſtle and lordſhip it ſelf, it being ſo often affirmed to be an inſeparable portion of the inheritance, that is thus anſwered.

A baron may make away his barony, that is to ſay, all his caſtles, lordſhips, and inheritances thereof, and yet retain the ſtile and dignity to himſelf and his heirs; which honour, ſtile, and dignity, paſſeth not in ſort as other inheritances do, by conveyances at the common law. The lands of the earldome of Kent are alienated, the honour and dignity thereof continueth ſtill. The lord AUDLEY now living, hath ſold and made away the town of Audeley and the caſtle of Helegh, which was the head of his barony, and yet is lord AUDELEY ſtill, and ſo ſhould his heir general be after him, if he ſhould dye without iſſue male. The lord GREY of Wilton hath in like ſort diſpoſed of Wilton upon Wye, the head of his barony, and yet the ſtile and dignity doth not thereby diſcontinue. And the old lord WILLOUGHBY of Parham, hath made an eſtate of Parham to the vicounteſs Hereford, for the term of her life, for her jointure; the remainder thereof, after her deceaſe, to WILLIAM his nephew, ſon to this lord WILLOUGHBY of Parham for term of his life; ſo that this lord hath not the poſſeſſion of Parham, and yet is, for all that, lord WILLOUGHBY of Parham ſtill.

Earl of Kent.

Lord AUDLEY.

Lord GREY of Wilton.

Lord WILLOUGHBY of Parham.

And ſo in this our caſe, although Bergavenny it ſelf be alienated by entail, yet muſt the honour and dignity thereof keep on the right courſe ſtill, according to the ancient uſage and cuſtome of the land in like caſes obſerved.

Thus much for anſwer to the ſaid objection: It now remaineth that the examples ſo often premiſed, for the proof of the cuſtome of England, in the tranſferring

ferring of baronies, to the heirs female for want of heirs male, be ſhewed and produced; and therefore forbearing to be over tedious, by the further rehearſal of further reaſons that might be uſed in that behalf, as alſo for the like reſpect omitting the examples of earldomes, heretofore divided among the heirs general, according to the rule of the cuſtome of this realm ſo often before recited, the dignity of which earldomes ever went to the eldeſt iſſue female, how many degrees off ſoever it were, and the iſſue of the younger daughters uſually were advanced unto baronies, falling unto their portions, in the partition of the earldome, whereof alſo they, and their poſterity, uſed the names, ſtiles, and titles (as every man but meanly read in hiſtory, or little acquainted with antiquity, knoweth and will confeſs) after a catalogue, or ſucceſſion, of the true lords of Bergavenny from the conqueſt here next in order for the reader's memory, preſented unto his view in one ſcheme, or figure; the examples ſerving for warrant and confirmation of the ſaid cuſtome of England, ſhall take their places according to their antiquity, and times wherein they were practiſed in every King's government ſince the conqueſt, not all, nor ſo many, by a great many, as may be collected out of her Majeſtie's records in the tower of London, and elſewhere preſerved; but enough to ſatisfie and content the wiſe and moſt reaſonable, ſuch as thoſe be, that ſhall have to do, and are to take knowledge of this caſe.

6

A Catalogue

A Catalogue of the barons of Bergavenny ſince the conqueſt.

DRUE lord of Balidoon, or Balon, a Norman.

(1) HAMELIN DE BALON lord of Wentland, and firſt builder of Bergavenny. — LUCIE counteſs of the iſle.

EMME.

(2) BRIENTIUS DE L'ISLE baron of Wallingford by his wife.

(3) WALTER of Gloceſter, high conſtable of England.

Two ſons lepers, dyed without iſſue.

MILES FITZWALTER high conſtable of England, and earl of Hereford. — SIBIL daughter and heir of ſir BERNARD NEWMARCH lord of Brecknock.

WILLIAM high conſtable after MAHEL, ſans iſſue.

MAHEL high conſtable after his brother HENRY, ſans iſſue.

ROGER earl of Hereford dyed ſans iſſue.

WALTER high conſtable of England. ſans iſſue.

(4) HENRY of Hereford high conſtable of England, and lord Wentland.

MARGERY wife to ſir HUMFREY BOHUN.

(5) WILLIAM lord Brewſe of Buck and Bremby.

BERTA lady Brecknock and Wentland.

LUCIE wife to HERBERT FITZHERBERT.

(6) WILLIAM lord Brewſe of Brecknock baniſhed by king JOHN. — MAUD of St. Valery, lady of Haye.

WILLIAM lord Brewſe of Bremby and Haye, baniſhed with his father.

(7) GILES biſhop of Hereford, lord Brecknock and Wentland.

(8) REGINALD lord Brewſe of Brecknock after his brother's death. — GRACE, one of the ſiſters and heirs of WILLIAM lord Brewſe.

MAUD, wife to GRIFFITH AP RHEES, Prince of South Wales.

LORETTA counteſs of Leiceſter.

(9) WILLIAM the laſt lord Brewſe of Brecknock. — EVE, one of the heirs of WILLIAM MARSHAL, earl of Pembroke.

ISABELL, wife to DAVID, the ſon of LLEWELINE prince of Wales.

MAUD, wife to ROGER lord Mortimer of Wigmore.

(10) WILLIAM CANTELUPE, lord Cantelupe of Bergavenny, created *temp.* HEN. III. — EVE wife to WILLIAM lord Cantelupe of Bergavenny.

ELEANOR, wife to HUMPHREY DE BOHUN, ſon and heir to the earl of Hereford.

(11) GEORGE lord Cantelupe of Bergavenny, dyed ſans iſſue.

HENRY lord Haſtings, dyed before his father's brother. — JOAN, wife to HENRY lord Haſtings.

MILICENT, wife to EDWARD lord Zouch of Haringworth.

A

ISABEL ſiſter and coheir to ſir AYMER DE VALENCE earl of Pembroke. — (12) JOHN lord Haſtings. — ISABEL daughter of HUGH DESPENCER earl of Wincheſter.

ELIZABETH, wife to ROGER lord Grey of Ruthyn.

(13) JOHN lord Haſtings.

ROGER MORTYMER the firſt earl of March.

RICHARD earl of Arundel and Surrey.

HUGH HASTINGS.

REGINALD lord Grey of Ruthyn.

(14) LAURENCE lord Haſtings, created earl of Pembroke.

AGNES daughter of ROGER lord Mortymer, earl of March.

THOMAS BEAUCHAMP earl of Warwick.

CATHERINE daughter of ROGER earl of March.

RICHARD earl of Arundel and Surrey.

HUGH HASTINGS.

REGINALD lord Grey of Ruthin, heir by the whole bloud to the laſt earl of Pembroke.

(15) JOHN lord Haſtings, earl of Pembroke.

THOMAS BEAUCHAMP earl of Warwick.

(17) Sir WILLIAM BEAUCHAMP created lord of Bergavenny by writ, 2°. 16. R. II.

JOAN ſiſter and coheir to THOMAS earl of Arundel and Surrey.

HUGH HASTINGS of Yorkſhire.

(16) JOHN earl of Pembroke ſlain at Juſts at Woodſtock, anno 15. R. II. ſans iſſue.

RICHARD BEAUCHAMP earl of Warwick, 2d husband to ISABEL.

ISABEL daughter and heir of THOMAS lord Spencer.

(18) RICHARD BEAUCHAMP lord Abergavenny created earl of Worceſter.

HENRY BEAUCHAMP duke of Warwick.

RICHARD NEVILL earl Salisbury, and alſo Warwick, by his wife.

ANNE ſiſter and heir of the whole bloud to the duke of Warwick.

(19) Sir EDWARD NEVILL, younger ſon to the earl of Weſtmerland, lord Abergavenny by his wife.

ELIZABETH ſole daughter and heir of RICHARD earl of Worceſter, lord of Abergavenny.

ANNE only daughter dyed within age ſans iſſue.

ISABEL wife to GEORGE duke of Clarence.

ANNE, wife to RICHARD duke of Glouceſter, that uſurped the crown upon king HEN. VII.

(20) GEORGE NEVILL, lord Abergavenny.

(21) GEORGE NEVILL, lord Abergavenny

Sir EDWARD NEVILL, knt.

(22) HENRY the laſt lord Abergavenny, dyed 9. Feb. 1586.

EDWARD NEVILL, now baron of Abergavenny by the entail.

Sir THOMAS FANE of Kent, knight. — MARY, daughter and ſole heir to her father.

EDWARD NEVILL, ſon and heir apparent.

FRANCIS. GEORGE. THOMAS. EDWARD. FRANCES, a daughter.

Examples choſen out of an infinite number of ſuch as after the deceaſe of a baron, or peer, of this realm, without iſſue male, in the right of their wives, mothers, or grandmothers, having been the ſole daughters, or the eldeſt daughter and coheirs to the ſaid baron, have enjoyed the name, ſtile, title, and dignity of the ſaid barony, according to the moſt ancient uſage and laudable cuſtome of England, in the times of every King's government ſince the conqueſt.

The general intendment of law and cuſtome of the realme, in caſe of baronies, ſeemeth to be for the heir general, ſo that there muſt be either ſome ſpecial act of parliament, or ſome peculiar cuſtome.

The barony of Wallingford.

WYGOD baron of Wallingford in com. Oxon. in the time of king HAROLD and WILLIAM the Conqueror.

Sir ROBERT D'OYLEY, married the daughter and heir of WYGOD. — The daughter and heir of WYGOD.

Sir MILES CRISPIN lord and baron of Wallingford, by his wife. — MAUD, the niece and ſole heir of WYGOD baron of Wallingford. — BRIENTIUS DE L'ISLE baron of Wallingford by his wife.

Two ſons dyed without iſſue, being ſtruck with the leproſy.

The barony of Halton.

WILLIAM FITZ NIGELL, baron of Halton and conſtable of Cheſter.

WILLIAM baron of Halton and conſtable of Cheſter, dyed in Normandy, ſans iſſue. — EUSTACE FITZ JOHN baron of Halton, and conſtable of Cheſter by his wife. — AGNES the eldeſt ſiſter and heir of WILLIAM baron of Halton. — MAUD was married to ſir ALBERT of Greſley.

RICHARD FITZ EUSTACE baron of Halton, and conſtable of Cheſter.

The barony of Emly.

URSO DE ABBOT baron of Emly, and ſheriff of Worceſter.

Sir WALTER BEAUCHAMP baron of Emly, and ſheriff of Worceſter, by his wife. — EMELYN, ſole daughter and heir of URSO DE ABBOT, the great baron.

WILLIAM BEAUCHAMP baron of Emly, and ſheriff of Worceſter.

The barony of Brune.

PAYN PEVERELL baron of Brune, in com. Cambr. *tempore* HEN. I.

WILLIAM PEVERELL baron of Brune, dyed ſans iſſue.	HAMMOND PEACH baron of Brune in the right of his wife.	ALICE eldeſt ſiſter and coheir of WILLIAM PEVERELL, baron of Brune.	ROSE lady Roos.	ASCELINE of Watervile.

GILBERT lord Peache of Brune in Cambridgeſhire.

The barony of Shelford.

Sir RALPH HANSELYNE baron of Schelford, in com. Nott. *tempore* STEPHANI *regis*.

Sir THOMAS BARDOLF, knt.	ROSE the eldeſt daughter and coheir.	The youngeſt daughter was married to EVERINGHAM.

DODO lord Bardolf of Schelford, in the right of his mother.

Sir WILLIAM EVERINGHAM.

The barony of Percy.

WILLIAM lord Percy.

WILLIAM lord Percy dyed ſans iſſue.	JOCELINE of Lovaine, lord Percy in the right of his wife.	AGNES lady Percy, eldeſt daughter.	MAUD.

HENRY lord Percy, in the right of his mother.

The barony of Veſcy.

Ivo lord Veſcy of Alnewick.

AGNES ſiſter and heir of WILLIAM baron of Halton, and conſtable of Cheſter.	EUSTACE FITZ-JOHN baron of Halton by his firſt wife.	BEATRIX, daughter and ſole heir of Ivo, baron of Veſcy.

RICHARD FITZ-EUSTACE baron of Halton, and conſtable of Cheſter.

WILLIAM FITZ-EUSTACE lord Veſcy, in the right of his mother, *tempore* HEN. II.

The barony of Kendale.

WILLIAM of Lancaſter, baron of Kendale.

GILBERT FITZ-ROGER FITZ-REYNFREY, ſteward of the houſhold to king HENRY II. — HELEWISE, daughter and heir of WILLIAM of Lancaſter, baron of Kendal.

WILLIAM baron of Kendall, in the right of his mother, ſurnamed of Lancaſter.

The Barony of Hingham.

HUBERT DE RYE baron of Hingham in Norfolk, *tempore regis* JOHANNIS.

Sir JOHN MARSHALL baron of Hingham by his wife. — ELIVA eldeſt daughter and heir. — ISABEL, the youngeſt, married to ROGER CRESCY.

WILLIAM MARSHALL baron of Hingham. — STEPHEN CRESCY.

The barony of Wolverly.

GERARD of Limneſey baron of Wolverley, *in com. Hertford. tempore regis* JOHANNIS.

JOHN of Limneſey baron of Wolverly, dyed ſans iſſue. — GERARD ODINGSELS, a Fleming. — BASIL the eldeſt ſiſter and coheir. — ALICE, the youngeſt ſiſter, was married to ſir HENRY PINKNEY.

WILLIAM of Odingſels baron of Wolverly, in the right his mother. — Sir HENRY PINKNEY,

The barony of Ewias Harald.

ROBERT of Ewias, baron of Ewias Harald, *in com. Hereford. tempore* JOH. *&* RICH. I.

Sir ROBERT TREGOZ baron of Ewias Harald, by his wife. — SIBIL daughter and heir of ROBERT baron of Ewias Harald. — Sir ROGER of Clifford, ſecond huſband.

ROBERT lord Tregoz of Ewias Harald, was ſlain at the battle of Eveſham.

The barony of Mulgrue.

WILLIAM FOSTARD baron of Mulgrue, *in com. Ebor. tempore* RICH. I.

ROBERT of Thurnam baron of Mulgrue, in the right of his wife, *tempore regis* JOHANNIS. — JOAN, sole daughter and heir of WILLIAM MULGRUE, baron.

Sir PIERS MAWLEY baron of Mulgrue, by his wife, *tempore* JOHANNIS. — ISABEL, daughter and sole heir of ROBERT baron of Mulgrue.

Sir PIERS MAWLEY baron of Mulgrue.

The barony of Morpeth.

ROGER MERLEY baron of Morpeth in Northumberland, *tempore* HEN. III.

WILLIAM FITZ-THOMAS of Greystoke. — MARY, eldest daughter and coheir. — ISABEL, the youngest daughter, married to sir ROBERT of Sondvile.

WILLIAM FITZ-WILLIAM of Greystoke, baron of Morpeth, in the right of his mother.

Sir PHILIP of Sondville.

The barony of Cory-Malet.

WILLIAM MALET baron of Cory-Malet *in com. Somerset. tempore* HEN. III.

WILLIAM lord Malet of Cory-Malet, dyed sans issue. — Sir HUGH POINTZ, knight. — HELEWISE the eldest sister and coheir. — MABEL the younger sister, was married to HUGH DE VYNON.

NICHOLAS POINTZ baron of Cory-Malet, in the right of his mother.

The barony of Ewias-Lacy.

GILBERT LACY baron of Ewias-Lacy *in com.* . . . . . *tempore* HEN. III.

WALTER LACY baron of Ewias-Lacy, dyed sans issue. — GEFFREY GENEVILL baron of Ewias-Lacy, in the right of his wife. — MAUD eldest sister and coheir. — MARGARET, was married to JOHN DE VERDUN.

PETER lord Genevill of Ewias-Lacy.

THEOBALD lord Verdun of Alveton.

The barony of Weſtmerland.

ROBERT VICOUNT baron of Weſtmerland, *tempore* HEN. III.

ROGER of Clifford, baron of Weſtmerland in the right of his wife. — ISABEL eldeſt daughter and coheir. — IDONEA, the 2d daughter, was married to ſir ROGER of Leyburne.

ROBERT CLIFFORD baron of Weſtmerland.

The barony of Folkſtone.

HAMON CREVEQUEUR baron of Folkeſtone, *in com. Cantii, tempore* HEN. III.

JOHN of Sandwick baron of Folkſtone, by his wife. — AGNES eldeſt daughter and coheir. — ISOULD was married to NICHOLAS of Lenham. — HELENA was married to BERTRAM of Cryoll.

JOHN of Sandwick baron of Folkſtone.

Sir JOHN SEAGRAVE baron of Folkeſtone, by his wife. — JULIAN, the ſole daughter and heir.

JOHN SEAGRAVE baron of Folkeſtone.

The barony of Tindale.

ADAM of Tyndale baron of South-Tyndale, in Northumb. *tempore* HEN. III.

NICHOLAS of Bolteby baron of South-Tindale, in the right of his wife. — PHILIPPA, daughter and ſole heir.

ADAM of Bolteby baron of South-Tindale.

The baronies of Egremont and Cockermouth.

RICHARD lord Lucy of Egremont and Cockermouth, *in com. Cumbriæ, tempore regis* JOHANNIS.

LAMBERT of Multon. — AMABIL eldeſt daughter and coheir. — ALAN of Multon, brother of LAMBERT. — ALICE, younger daughter and coheir.

THOMAS lord Multon of Egremont, in the right of his mother.

THOMAS MULTON lord Lucy of Cockermouth, in the right of his mother.

The

The barony of Wemme.

WILLIAM PANTOLF baron of Wemme, *in com. Salop. tempore* HEN. III.

RALPH BOTELER baron of Wemme, in the right of his wife. — MAUD, sole daughter and heir.

WILLIAM BOTELER baron of Wemme.

The barony of Beverstone.

JOHN GOURNAY baron of Beverstone, *in com. Glouceſt. tempore* EDW. I.

Sir JOHN AP ADAM baron of Beverstone, in the right of his wife. — ELIZABETH, daughter and sole heir.

THOMAS AP ADAM baron of Beverstone.

The barony of Kidwelly.

THOMAS LAMBERT baron of Kidwelly, in Wales, *tempore* HEN. III.

PATRICK CHAWORTH baron of Kidwelly, in the right of his wife. — HAWISE, daughter and sole heir.

PAYN CHAWORTH baron of Kidwelly.

The barony of Eresby.

Sir JOHN BEKE baron of Eresby, *in com. Linc. tempore* EDW. I.

Sir ROBERT of Willoughby. — ALICE eldeſt daughter and coheir.

Sir RICHARD HARECOURT. — MARGARET, the 2d daughter.

JOHN lord Willoughby of Eresby, in the right of his mother.

JOHN HARECOURT.

The barony of Dudley.

Sir ROGER SOMERY baron of Dudley, *in com. Wigorn. tempore* EDW. I.

Sir JOHN SOMERY baron of Dudley, dyed ſans iſſue, *anno* 19. EDW. II.

Sir JOHN SUTTON, knight. — MARGARET, the eldeſt ſiſter and coheir.

JOAN was married to THOMAS BOTTETOURT.

Sir JOHN SUTTON baron of Dudley, in the right of his mother.

JOHN lord Bottetourt Weoley.

The barony of Webbeley.

THOMAS lord Furnivall of Sheffield.

THEOBALD VERDUN baron of Webbeley, *in com. Hereford. tempore* EDW. II.

- THOMAS FURNIVAL the younger, was baron of Webbeley in the right of his wife, and in his father's life time.
- JOAN, the eldest daughter and coheir.
- ELIZABETH, was married to sir BARTHOLOMEW BURGHERSH.
- MARGARET, was married to sir JOHN CROPHULL.

WILLIAM lord Furnivall of Sheffield and Webbeley.

The barony of Saint John.

HUGH lord St. John of Basing, *in com. Hants, tempore* EDW. III.

- Sir JOHN ST. PHILBERT lord St. John of Basing by his wife.
- MARGARET eldest daughter and coheir.
- Sir LUCAS POYNINGS lord St. John of Basing by his wife, after the death of sir JOHN ST. PHILBERT.
- ISABEL, younger daughter and coheir.

JOHN ST. PHILBERT dyed sans issue.

THOMAS POYNINGS lord St. John of Basing.

The barony of Bedale.

Sir BRIAN FITZ-ALANE baron of Bedale, *in com. Richm. tempore* EDW. II.

- GILBERT STAPLETON.
- AGNES, the eldest daughter and coheir.
- CATHARINE, was married to JOHN lord Grey of Rotherfield.

MILES STAPLETON baron of Bedale in the right of his mother, *tempore* EDW. III.

JOHN, lord Grey of Rotherfield.

The barony of Maltravers.

JOHN lord Maltravers of Lychell, *tempore* EDW. III.

- Sir JOHN of Arundel, lord Maltravers by his wife.
- ELEANOR, the eldest daughter and heir.
- JOAN, was married to sir ROBERT ROOS, knt.

JOHN of Arundel lord Maltravers.

The barony of Furnyvall.

WILLIAM lord Furnivall of Sheffield.

Sir THOMAS NEVILL, lord Furnival in the right of his wife. — JOAN, only daughter and heir.

MAUD, daughter and heir, was married to JOHN earl of Shrewsbury.

The barony of Cobham.

JOHN lord Cobham in Kent, *tempore* RICH. II.

Sir JOHN DE LA POLE of Athby, knight. — JOAN, only daughter dyed before her father.

Sir REGINALD BRAYBROOK, dyed before JOHN lord Cobham, his wife's grandfather. — JOAN DE LA POLE, lady Cobham immediately after the death of her grandfather. — Sir JOHN OLDCASTLE lord Cobham in the right of his wife.

Sir THOMAS BROOK, lord Cobham in the right of his wife. — JOAN BRAYBROOK, lady Cobham. — JOAN OLDCASTLE, dyed young.

EDWARD BROOK lord Cobham.

The barony of Audley.

JAMES lord Audley of Helegh, *in com. Stafford.*

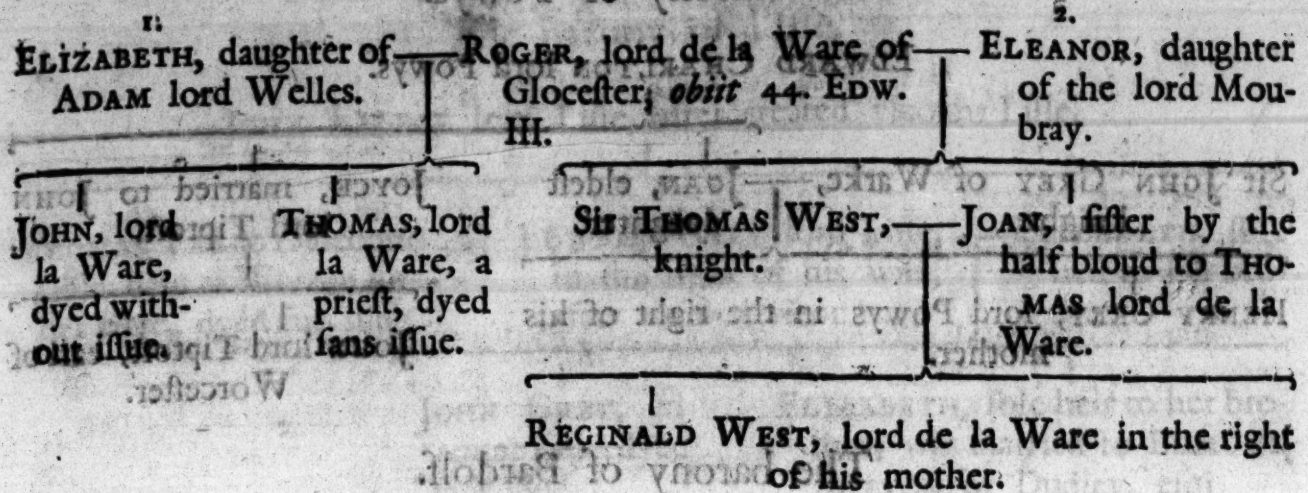
NICHOLAS, lord Audley, dyed sans issue, a°. 15. RICH. II. — Sir JOHN TOUCHET, knight. — JOAN, eldest sister and coheir. — MARGARET, was married to sir ROGER HILARY

Sir JOHN TOUCHET.

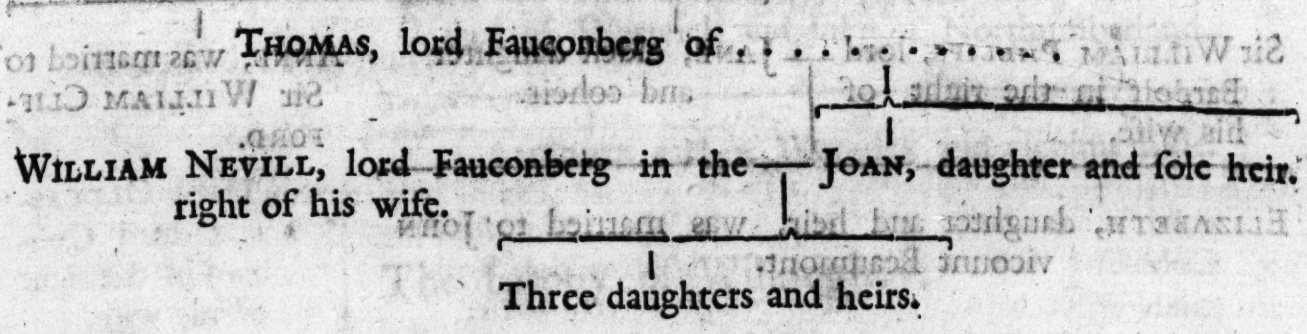
JOHN TOUCHET, lord Audley in the right of his grandmother.

The

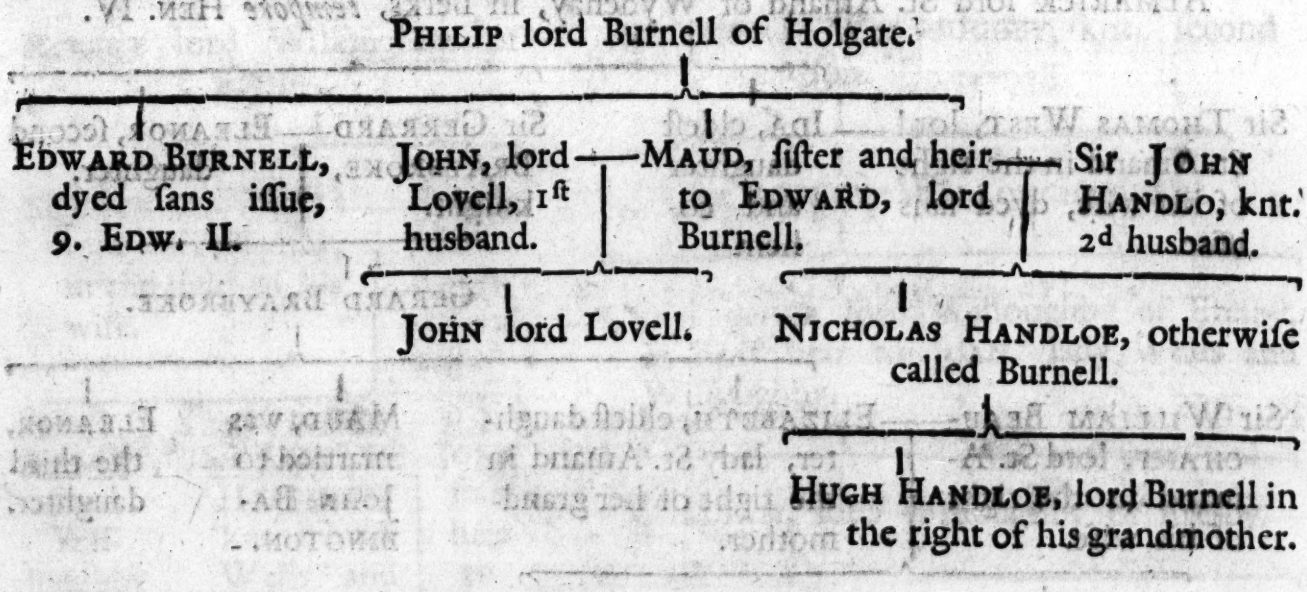
The barony of La Ware.



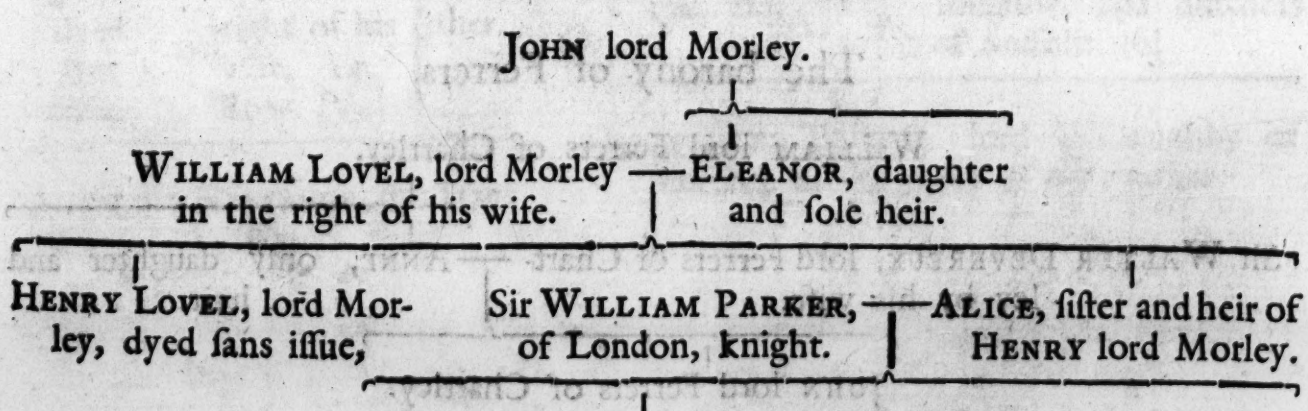
The barony of Fauconberg.



The barony of Burnell.



The barony of Morley.



The barony of Powys.

EDWARD CHARLTON lord Powys.

Sir JOHN GREY of Warke, knight. — JOAN, eldeſt daughter.

JOYCE, married to JOHN lord Tiptoft.

HENRY GREY, lord Powys in the right of his mother.

JOHN lord Tiptoft, earl of Worceſter.

The barony of Bardolf.

THOMAS, lord Bardolf of Wirmgay.

Sir WILLIAM PHELIPS, lord Bardolf in the right of his wife. — JANE, eldeſt daughter and coheir.

ANNE, was married to Sir WILLIAM CLIFFORD.

ELIZABETH, daughter and heir, was married to JOHN vicount Beaumont.

The barony of St. Amand.

ALMARICK lord St. Amand of Wydehay, in Berks, *tempore* HEN. IV.

Sir THOMAS WEST, lord St. Amand in the right of his wife, dyed ſans iſſue. — IDA, eldeſt daughter and coheir.

Sir GERRARD BRAYBROKE, knight. — ELEANOR, ſecond daughter.

GERARD BRAYBROKE.

Sir WILLIAM BEAUCHAMP, lord St. Amand in the right of his wife. — ELIZABETH, eldeſt daughter, lady St. Amand in the right of her grandmother.

MAUD, was married to JOHN BABINGTON.

ELEANOR, the third daughter.

RICHARD BEAUCHAMP lord St. Amand.

The barony of Ferrers.

WILLIAM lord Ferrers of Chartley.

Sir WALTER DEVEREUX, lord Ferrers of Chartley by his wife. — ANNE, only daughter and heir.

JOHN lord Ferrers of Chartley.

WALTER DEVEREUX lord Ferrers of Chartley, after created vicount Hereford.

The barony of l'Iſle.

JOHN TALBOT lord Liſle, after created vicount Liſle.

- THOMAS TALBOT vicount Liſle, ſlain at Wotton under edge, dyed ſans iſſue.
- EDWARD GREY lord Liſle, in the right of his wife, after created vicount.
  - JOHN GREY, vicount Liſle, dyed ſans iſſue.
  - ELIZABETH, ſole heir to her brother, was married to EDMUND SUTTON of Dudley, eſq;
    - JOHN SUTTON of Dudley, vicount Liſle, after created earl of Warwick and duke of Northumberland.
      - AMBROSE earl of Warwick and vicount Liſle.
- ELIZABETH, ſole heir to her brother.

The barony of Willoughby.

WILLIAM lord Willoughby of Eresby, *in com. Linc. obiit* 11. HEN. IV.

- ROBERT lord Willoughby of Eresby.
  - Sir RICHARD WELLS lord Willoughby, in the right of his wife.
    - ROBERT, lord Willoughby and Wells, dyed ſans iſſue.
    - Sir RICHARD HASTINGS, knt. lord Wells and Willoughby, in the right of his wife, 14. EDW. IV.
      - ANTHONY HASTINGS, dyed ſans iſſue.
    - JOAN ſole heir to her brother.
  - JOAN ſole daughter and heir.
- Sir THOMAS WILLOUGHBY, knt. ſecond ſon.
  - Sir ROBERT WILLOUGHBY, knt.
    - CHRISTOPHER lord Willoughby of Eresby, as next heir to JOAN, lady Wells and Willoughby.
      - WILLIAM, lord Willoughby of Eresby.
        - RICHARD BERTIE, eſq;
          - PEREGRINE BERTIE, lord Willoughby of Eresby in the right of his mother.
        - CATHERINE, lady Willoughby, and dutcheſs of Suffolk.

The baronies of Bonvile and Harington.

WILLIAM, lord Bonvile and Harington.

THOMAS GREY, lord Bonvile and Harington, by his wife, after created marquis of Dorſet. — CICELIE, only daughter and heir.

THOMAS GREY, lord Bonvile and Harington, after marquis of Dorſet.

The barony of Scales.

THOMAS lord Scales and Nucells, *obiit* 38. HEN. VI.

ANTHONY WIDDIVILL, lord Scales in the right of his wife, *tempore* EDW. IV. — ELIZABETH, daughter and ſole heir.

The barony of Dacres.

THOMAS, lord Dacre of Gilleſland, *in com. Cumbr. obiit* 36. HEN. VI.

Sir THOMAS DACRE, knt. dyed before his father.

RICHARD FENIS, lord Dacre in the right of his wife. — JOAN the eldeſt daughter and heir. — PHILIPPA was married to ſir ROBERT FENIS younger brother to RICHARD lord Dacre.

Sir JOHN FENIS, knt. dyed before his father.

THOMAS FENIS, lord Dacre of Herſtmonceaux in Suſſex.

HUMPHREY DACRE, created by writ lord Dacre of Gilleſland.

THOMAS, lord Dacre of Gilleſland.

WILLIAM, lord Dacre of Gilleſland and Greyſtoke.

The barony of Strange.

JOHN, lord Strange of Knockyn, *in com. Salop. obiit* 20. EDW. IV.

GEORGE STANLEY, lord Strange in the right of his wife. — JOAN, only daughter and heir.

THOMAS STANLEY lord Strange, after earl of Derby.

The barony of Fitzwarin.

FOULK, lord Fitzwarin of Whittington.

Sir RICHARD HANKFORD knt. — ELIZABETH daughter and ſole heir.

Sir WILLIAM BOURCHIER, lord Fitzwarin in the right of his wife. — THOMASINE, daughter and ſole heir.

FOULK BOURCHIER, lord Fitzwarin.

The barony of Berners.

Sir RICHARD BERNERS, knt. lord Berners.

Sir JOHN BOURCHIER, lord Berners in the right of his wife. — MARGERY, daughter and ſole heir.

HUMPHREY BOURCHIER, lord Berners.

The barony of Roos.

THOMAS, lord Roos of Beauvoir.

EDMUND lord Roos, dyed ſans iſſue, a°. 1508.

Sir ROBERT MANNORS of Ethalecaſtle in Northumberland, knt. — ELEANOR, eldeſt ſiſter and heir.

ISABEL, was married to ſir THOMAS LOVEL, and dyed ſans iſſue.

GEORGE MANNORS, lord Roos in the right of his mother.

THOMAS MANNORS, lord Roos, after earl of Rutland.

The barony of Fitzwalter.

WALTER, lord Fitzwalter of Woodham in Eſſex.

Sir JOHN RATCLIFF, knt. firſt husband. — ELIZABETH only daughter and heir. — JOHN, lord Dynham, ſecond husband.

JOHN RATCLIFF, lord Fitzwalter in the right of his mother.

GEORGE and PHILIP DYNHAM, dyed ſans iſſue.

ROBERT RATCLIFF, lord Fitzwalter, after created earl of Suſſex.

Objections

Objections anſwered touching the name, ſtile, title, and dignity, of lord Abergavenny, proving ſufficiently that the name and dignity of the ſame barony, is lawfully deſcended in fee ſimple to dame MARY Bergavenny, ſole daughter and heir of HENRY late lord Abergavenny, her father.

IF the will of entail, of the deceaſed lord GEORGE be objected? It may be ſhewed, that the ſaid will entaileth nothing but lands, as plainly appeareth by the words of the will, which are as followeth: All perſons which now ſtand, or hereafter ſhall ſtand ſeiſed of any of my baronies, honours, mannors, caſtles, or ſhall ſtand ſeiſed of them, to the uſe of my heirs males, begotten upon MARY my late wife, *&c.* entayle with many remainders. Which words, *viz.* ſtand ſeiſed, or hereafter ſhall ſtand ſeiſed, do manifeſt the meaning to have been of lands only, and not of his name and dignity (whereof beſides, there is no mention in the ſaid will) yet it is moſt true, that neither the ſaid lord, nor any other lord, did, or could ever make any feofment of his name and dignity; neither were it material if he had ſo done; for that only ſuch name of honour and dignity, as it proceedeth from the Prince, even ſo it cannot, nor may be transferred nor altered, by the feofment, or will, of any ſubject, out of that due courſe of inheritance, wherein the Prince by any means hath firſt granted, confirmed, and ſettled the ſame.

The will entaileth lands only.

If the act of parliament of reſtitution made the 2d and 3d PHIL. and MARY be objected.

It may be likewiſe ſhewed, that the ſaid act of parliament, hath altogether relation to the ſaid will, and giveth, or reſtoreth, nothing but that remainder of lands only, which, notwithſtanding any former act of reſtitution, was by the attainder of ſir EDWARD NEVILL, then veſted in her Majeſty, as by the words of the ſaid act is apparent; which are as followeth. All ſuch baronies, honours, mannors, *&c.* which by the ſaid will are entailed, willed, *&c.* and yet not all that remainder, as appeareth by the clauſe of reſervation to her Majeſty, and alſo by entailing all the ſaid baronies, honours, mannors, *&c.* in ſuch ſort, as no name of honour and dignity, ever were, or can be.

See the words at large in the act itſelf.

Alſo there is one proviſoe, or ſaving, in the latter end of the ſaid act of parliament, which preſerveth, or foreprizeth every perſon's right, title, and demand, to all and every the ſaid baronies, honours, *&c.* (other than her Majeſtie's) as if this act of parliament had never been made.

Objection. If it be objected, that the name of honour and dignity of lord Bergavenny is inſeparably annexed to the caſtle of Bergavenny, as it is ſaid that the name and honour of being earl of Arundel, is unto the caſtle of Arundel.

Reſponſe. It ſhall be proved, that RICHARD BEAUCHAMP, EDWARD NEVILL, GEORGE NEVILL, and GEORGE NEVILL, were all four ſucceſſively lords Bergavenny, when not any one of them was ſeiſed of the caſtle of Bergavenny.

Finally, It appears by the records of the parliament, that ſir EDWARD NEVILL, and after his death, GEORGE NEVILL his ſon, were ſucceſſively either of them called by writs to parliament, lord Bergavenny, whereby it is proved, that the ſame name and dignity was to the ſaid GEORGE in fee; and that after his death, the ſame name and dignity hath deſcended accordingly; and to have been in the ſecond GEORGE, and in HENRY in fee-ſimple; either of them being by deſcent ſucceſſively lords of Bergavenny.

This is a copy of my lord vicount Longvile's book, which was lent me by Mr. LONGVILE of the Inner Temple, and copyed by S. STEBBING, and examined by him and Mr. EVANS, in Oct. 1692.

G. KING, Lancaſter.

Of the nobility of the realm, collected out of the body of the common law, with mention of ſuch ſtatutes as are incident thereunto upon the debate of the barony of Aburgavenny.

By Serjeant DODDRIDGE.

Queſtion. Whether the barony of Aburgavenny, with the title and dignity, be deſcended unto the lady, being the daughter and heire of the honourable HENRY NEVILL, the late baron of Aburgavenny; or unto the ſpeciall HEIRE MALE, unto whom the caſtle of Aburgavenny (being antiently the head of that barony) is deſcended.

WHEREIN are three thing conſiderable.

1. Firſt, this generall theſis, whether within the realme of England, there be any baronies by tenure, and whether *baronia ſit dignitas annexa feodo*, (viz.) whether the HEIRE MALE having the caſtle holden *per baroniam*, ſhall have the title, or, the heire generall which hath not the caſtle?

2. The ſecond is hypotheſis, whether by former preſidents it may be ſhewed, that this barony of Aburgavenny hath beene guided by the lawfull deſcent of the caſtle of Aburgavenny, or whether the ſame hath gone to the heires general ſundred from the caſtle?

3. The third is, that it is not to be doubted whether the dignitie of baron may deſcend to the heire female (for where ſuch caſtle, *&c.* is holden *per baroniam*, and doth deſcend unto the heire female; there likewiſe the title, *&c.* as in many noble houſes of this realme is moſt evident) but the queſtion is, Whether the title of baron, or baroneſſe, may deſcend to the heire female; whether that fee holden by barony, is deſcended to the heire male or no; and whether the fee to ſupport the dignitie, may bee ſevered from the dignitie.

It is true of ULPIAN, *Publicè intereſt quod ordinum familiarumque ſolva ſit*, which duly conſidered, is cauſe that the ſpeciall heire male of the late baron deceaſed, without any affectation of honour, or humour of ambition, deſireth to make knowne what things former times obſerved, he hath now found to have been conſidered in ſuch like queries; nevertheleſſe with all humility and loyall dutie hee ſubmitteth himſelf to the princely pleaſure of the Queene's moſt excellent Majeſtie, in whom is the fountaine of all nobilitie, and unto the cenſure of the right honourable the earl marſhall of England, unto whom the juriſdiction and cogniſance of the ſame cauſe by office appertaineth.

Lib. Ö ſed ſi f. de ventre inſpiciend. BALDWIN in la ſacraledge divinis reſcript. ante nobilit. cap. 6.

1. But before proofe be produced, it ſhall not bee amiſſe to conſider two principall things, what manner of proofe in theſe cauſes is moſt pregnant, and by what law this controverſie might beſt bee determined. 2. Some things are requiſite to bee delivered in generall manner, touching the ſtate of the baronies within the realme, whereby the querie in hand may be the better apprehended, and receive the more eaſie reſolution.

As touching the firſt, it is to be obſerved, that the dignity of a baron, and that name given to a degree of nobilitie, was not uſuall any where, untill neere the declination of the ROMAN Monarchy, and therefore thoſe parts of the civill law, which contain the ancient ROMAN lawes, doe afford ſmall proofe of the deciding of this kind of controverſie, otherwiſe then perchance now and then there are inſerted ſome generall ſentences or axiomes of the law of nature, which may be particularly applied as the occaſion ſerveth.

Therefore in thoſe times, upon the ſundry invaſions of the Northern people, which haſtened the ruine of the ROMAN eſtate, when tenures, and that which they call *feuda*, had their firſt originall, divers new dignities of nobilitie were

Goths. Vandalls.

deviſed, and drawne from the ſervice of the field, whereof ſome of them formerly had been but names of offices, as may appeare in the ſecond booke, *De feudis*, in the title, *Quis dicatur dux marchio, &c.*

Hee that would not have the controverſies moved within the realme concerning this kind of dignities to be determined by the common law, and yet would, that the common cuſtome of our countrey ſhould direct the ſame, ſpeaks, in my underſtanding, contrary things, for it is a general maxime, that the common cuſtome of the realme, is the common law of the realme. Therefore to affirm, that the common uſage of the countrey ſhould direct the controverſie, and to denie that the common law ſhould determine it, is contrary to it ſelf.

7. Hen. VI. Martin. 9. Edw. IV. & 38. Hen. VIII. cuſtom. b. 59.

That the common law doth determine this kind of controverſie, cannot ſeeme ſtrange to him that conſidereth the generall diviſion, whereby the ſaid law is diſtributed into parts, *Eſt autem jus publicum, & jus privatum. Jus publicum*, Bracton diſpoſeth it, *eſt jus quod ad ſtatum reipublicæ pertinet & conſiſtet in ſacris ſacerdotibus & magiſtris.* Others give a more large ſcope to this diviſion, diſtributing *jus publicum* into three parts, into *jus civile, jus feciale, & jus queſtorium.*

Bracton, lib. 1. cap. 5. & 2 de juſto & jure. Joachimus Hosp. de juris arte, lib. 2. de rebus humanis ſive de jur' civil'.

The firſt part, *jus civile*, though it be the generall name of the whole law, yet in this diviſion they doe underſtand thereby, that part of the law wherein conſideration of many things are had, tending chiefly to the publick good, and wherein perſons of men are conſidered diverſly; *dividuntur quinque formæ modis, pro loco, pro facultate, pro ordine, pro jure, pro dignitate.* Under that diviſion which is in reſpect of order, all degrees of perſons, noble and ignoble, are comprehended, and under the diviſion, in regard of dignity, the prince, magiſtrate, officers of all kinds are contained. The conſideration therefore of all degrees of nobility is a part of the law practiſed in every kingdome, under that diviſion which reſpecteth publicke juſtice, and therefore in regard of perſons *ſub ordine debito*, this is now apparently perceived, if we apply our thoughts to the regard of juriſdiction in generall, which reſpecteth the fountain of juſtice from whom it ſpringeth.

All juſtice is either commutative or diſtributive. Commutative juſtice determineth debates growing upon contracts, inheritance, or chattels, and thoſe bee reall or perſonall, which ſuites are commenced *ad inſtantiam partis*, by plaint, bill, or writ, in the ordinary court of juſtice within the realme. Diſtributive juſtice is twofold, for either it doth ordaine puniſhment for ſuch crimes as doe fall within the correction of the lawes, or elſe it doth diſtribute a reward for virtues. That kind of diſtributive juſtice that inflicts puniſhment, proceedeth in ſome caſes *ad inſtantiam partis*, as in appeales of murder, rape, robbery, *&c.* That moſt uſually *ex officio*, and that either by indictment or preſentment. That kind of diſtributive juſtice which concerneth the advancement of virtue in beſtowing of honour, which is the proper guerdon of virtue, remaineth with the higheſt ſoveraigne, annexed to the imperiall crowne of the realme, for as virtue is the gift of none but God from heaven, ſo the reward of virtue with honour for her Majeſtie, God's ſubſtitute on earth within, *&c.*

In camer. ſtellat. 39. Eliz. inter comit. Kanc. & Rotheram. vide poſtea.

But when honour and armes (being the enſignes of honour) be once beſtowed on any, or poſſeſſed by any, if there ſhall ariſe contention between competitors for the ſame, pretending ſeverall challenge thereto, the ancient policie of the realme hath ordained an eſpeciall court, the juriſdiction whereof is immediately derived from the crowne, and whereof the judges have been right honourable perſonages, the lord high conſtable, and the earl marſhall, and in later times the judge thereof is the right honourable the earl marſhall, the juriſdiction of which court conſiſts in the execution of that part of diſtributive juſtice, which concerneth the advancement and ſupport of vertue.

Diſt. lib. 10. cap. 4. Com. 304. 6.

The court wherein, and the judges by whom theſe controverſies are to be determined by that which is above-ſaid may partly appeare. The lawes whereby the ſame are to be decided, are the lawes of God, the generall concluſions of the lawes of nature, and of the law of nations, together with the cuſtomes and uſages

uſages of ſtatutes and ordinances of our countrey in like caſes heretofore, either obſerved, or provided, or which are the primary grounds, and chiefe principles of the lawes of this realme. And if no cauſe heretofore hath happened that might be a preſident to determine ſuch future controverſies, then in the judgement of ſuch doubts, that reſolution is to be embraced, which is moſt correſpondent to our government, agreeable with the diſpoſition of our people, and ſo eſpecially as that the new judgement (ſo it be promulged) do not in any matter of conſequence impeach, infringe, or infeeble any old or former received law, or uſage then in force. The law therefore of our countrey ſo branched into ſeverall courts, through the ſeverall juriſdictions aforeſaid, ought to determine all civill and criminall cauſes within the body of this realme concerning whatſoever cauſes. 8. Edw. IV. per Yelverton, Bract. lib. 1. cap. 2.

Nevertheleſſe, ſome men there are, not duly conſidering of what principles and parts the lawes doe conſiſt, have laboured to prove, that the queſtion of nobilitie and armes ſhould not be determined by the lawes of the realme, framing unto themſelves many arguments to prove their aſſertion, the chief of which arguments are here propoſed and anſwered.

Firſt, It is ſaid that the lawes of the realme doe make all the daughters equally to inherit, but it is not ſo in the deſcent of dignities and titles of honour, and therefore it ſeemeth that the queſtions concerning the deſcent of dignitie are not determinable by the lawes of the realme, Object. 1.

To this argument may bee anſwered, that there are divers inheritances, ſome of things corporall, as lands, tenements, *&c.* ſome of incorporall, framed, not by nature, but by man's policy, and therefore called *Jura*: the firſt ſort doe lie in livery, the other are ſuch as doe lie in grant. Of the later ſort there are divers kinds, ſome matters of perceptible profit, as offices common, *&c.* ſome others are matters chiefly of caſe, as wayes and paſſages over the land of others; ſome others concerne matter of profit and pleaſure, as forreſts, parkes, chaſes, warrens, *&c.* others of juriſdiction, as the grant of courts; others of priviledges and immunities, as *a getter* to one and his heires, to be quit of ſubſidies, dizmes, quinzims, *&c.* others matter of honour, as the dignitie of a duke, marqueſſe, earle, viſcount, or baron, granted to one and his heires generall, or to him and the heires of his bodie. Anſwer. Bract. lib. 2. cap. 4. fol. 10. & lib. 2. cap. 5. fol. 13. coment. 170.

Inheritance concerning matters of honour, being things in their nature, participating of ſuperioritie and eminency, are not partible in any equalitie among many, and therefore muſt of neceſſitie deſcend unto one, and that is unto the eldeſt daughter inheritable, where there are no heires males lawfully to challenge the ſame. Cap. 1. præterea de prohibita feodi alienatione per frederes.

There was a judgement in the time of Hen. III. touching the deſcent of the earledome of Cheſter, after the death of the earle, who died without iſſue male, his ſiſters being his heires, which judgement was, that the ſaid earledome ſhould be divided as other lands, and not to the eldeſt, but this judgement was holden erroneous then. For Bracton, a learned judge of that age, thus ſeemeth to write thereof (*viz.*) *De hoc autem quod dicitur quod de feodo milit. veniunt in diviſione capital. meſſuagia, & inter cohæredes dividuntur; hoc verum eſt niſi capitale meſſ. ſit caput comitat. propter jus gladii quod dividi non poteſt, vel caput baroniæ caſtrum vel aliud ædificium, & hoc ideo ne ſit caput in plures particulas dividatur, & jura comitat. & baroniar' deveniant ad nihilum per quod deficiat regnum, quod ex comitat. & baronibus dicitur eſſe conſtitutum, ſi autem plura ſunt ædificia quæ ſunt capita baroniæ dividi poſſunt in cohæredes facta electione, ſalvo jure aſſuet. quia cum plura ibi jura ſunt quod liber per ſe poterit integre obſervari, quod autem non eſt in uno ut prædict' eſt licet a quibuſdam dicatur. Quod in aliis regionibus aliquando de conſuetudine dividatur, ſed quod nunquam dividi videtur in Anglia debeat, nec viſum fuit contrar', & erit conſuetudo regionis obſervanda ubi hæreditas eſt quæ petitur, & perſonæ naſcuntur quæ petunt; & unde ſi dicatur quod in regno Angl. aliquando facta fuit partitio, hoc fuit injuſtum.* It is therefore evident that baronies, *&c.* 23. Hen. III. Fitz. com. 8. Bracton, lib. 7. fol. 76. de coparcen.

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Vermon liver d'antiquities à placito, 290. ad placitum, 301.

doe by the lawes of the realme deſcend unto the eldeſt coparcener, and judgement given once to the contrary, thereof Bracton doth rightly accompt to be unjuſt, his reaſon is notable; for in as much as the honour and chivalry of the realme doth chiefly conſiſt in the nobilitie, reaſon will not that ſuch dignities ſhould be divided among coparceners, whereby through multitude the reputation of honour in ſuch ſucceſſion, and ſo divided, might bee impaired, as the ſtrength of the realme being drawne into many hands with decreaſe of livelihood by ſuch partition, ſhould be enfeebled. In which reſolution Britton, the baroned biſhop of Hereford, who compiled his booke in the name, and by the commandment of Edw. I. accordeth, who delivereth this as a ſpeciall caveat; *en tous caſes ſont les droits des eſpees* (that which Bracton calleth *jus gladii*) *gardes de ſole miſſe & diſmembres*, he calleth it *jus gladii*, becauſe dukes, earles, be at the time of their creation, *cinguntur gladiis; gladius autem ſignificat defenſionem, reginæ & patriæ*; but howſoever that judgement was given, or whenſoever it was, nevertheleſſe it is very evident that it was ſoone redreſſed, for if it were given upon the death of Ranulph, the laſt of the name, earl of Cheſter, who died about 17. Hen. III. the writers about that time doe teſtifie, that the earldome of Cheſter came wholly to John Scot, the ſon of David, earl of Huntington and Anguiſh, and of Maude, the eldeſt ſiſter of the ſaid Ranulph. If it were given upon the death of the ſaid John Scot, who died without iſſue about 24. Hen. III. (for in the reports of the law, the difference of a yeare is no great matter) yet notwithſtanding the ſaid judgement ſtood not in force, for that the ſaid King aſſumed the ſaid earledome into his owne hands upon other ſatisfaction made to the ſiſters coparceners of the ſaid John Scot, *ne tanta hæreditas inter colos deduceretur.*

Pet. Greg. de repub. lib. 7. cap. 5.

Britton, 187. de herit. devis.

Matth. Paris moniſt. ſancti Albani chron. 366.

That the deſcent of dignities and offices of honour are determinable by the common law is made manifeſt by the great cauſe concerning the office of the lord high conſtable of England challenged *tempore* Hen. VIII. by the duke of Buckingham, and determined by the reſolution of the judges, as by a note of that caſe extant, whereof my lord Dyer in his reports hath a memoriall is moſt evident, where the caſe was, that Humphrey de Bohun, earle of Hertford and Eſſex, held the manor of Harlefield, Newnham and Whitinghurſt, *in com' Glouc' au roy pur ſervice de eant hault conſtable d' Angl. que mor' tyent iſſue 2 files que font partition de meſme les maners, & part le office eant ſervie' pur reaſon de tenure que deſcent' al ambu files dee exerciſe pur lour ſufficient deputie (dum ſole vixerint) mez apnez lour mariage, & fuit dee exerciſe ſolement pur le baron el'eigne, mes quia* Hen. de Bullingbroke *cap^s* Hen. IV. *que ad eſpouſe le puiſne a que le man' de Whittenhurſt de eant part' de terr' iſſ' ten' fuit allot' pur ſa pur port.* Another querie was moved, whether by the unitie of parcell of the tenancy in the King, the ſaid office were not determined, or whether this were in the other ſiſter; when the juſtices reſolved that the office had its continuance in the eldeſt ſiſter and her heires, of whom the ſaid duke was deſcended, but becauſe the exerciſe of the ſaid office was a ſervice in reſpect of tenure, the ſaid judges further reſolved, that the King might refuſe to have the ſaid office exerciſed, as any lord may refuſe the homage of his tenant; all which reſolutions the two chiefe juſtices did ſignifie unto the King accordingly in the names of themſelves and the reſt.

M. 6. Hen. VIII.

Dyer, 285.

Object. 2. Second objection, that by the law of chivalry, if the widow of a duke, earle, baron, &c. doe marry with a knight, eſquire, or gentleman, then nevertheleſſe ſhee retaineth her name of honour; whereas the common law doth otherwiſe determine thereof; and therefore they conclude, that the common law doth not determine this kind of controverſie concerning the title, names and dignities noble.

Anſwer. There muſt be made a disjunction betweene the ſtrictneſſe of law, and courteſie of ladyes at the court, for it is a rule in law, as it is the ſame law of chivalry, and in that point ſo is, and ſhould be knowne among the heraulds, foraſmuch as a report of law in that caſe doth acknowledge it to be taken out

14. Hen. VI. 2. & 8. a.

of

of the bookes of heraulds, that *quando mulier nobilis nupserit ignob. &c.* Of the which FORTESCUE ſometime chiefe juſtice of England yeeldeth a notable reaſon, *mulieres honore maritorum, &c. ſin autem miſeris ordinis verum?* For if ſhe be honoured with any title in reſpect of her husband, it is reaſon that after his death ſhe marrying with an inferiour *ſub cujus poteſtate vivet*, that ſhe ſhould bee of like qualitie and reputation as is her ſaid husband. For as ſhe was inabled by the one, ſo muſt ſhe be content to leave that nobilitie by ſtrict courſe of law for lieu of the other, ſo that in this point the law is one way, and the honour and courteſie of ladyes another. And as the civilian ſaith in the like caſe, *aliud eſt jus, aliud privilegium.* Nevertheleſſe, the books of our law doth make mention of that courteſie, and allow of it as a courteſie, though not as the law.

5. Mar. bre. Br. 546. & noſme 69. FORTESCUE. 100. Cod. lib. 10. de incolis leg. final.

6. EDW. III. 7. EDW. VI. 79. 3. ELIZ. 23. 69.

With theſe doe agree the law of nations, with which concordeth alſo the civil law, *fœminæ nuptæ clariſſimis perſonis clariſſ. perſonarum appellatione continuentur.* But of the other ſide, *clariſſ. fœminarum nomine ſenator. Filiæ, niſi quæ viros clariſſ. ſortitæ ſunt, non habentur. Fœminis enim dignitat. clariſſ. mariti tribuunt. Parentes verò donec plebeis nuptiis fuerint copulatæ, tamdiu igitur clariſſ. fœmina erat quamdiu ſenatori nupt. eſt, vos clariſſ. aut ſeparat. ab eo alii inferioris dign. non nupſerit.*

Cod. de dignit. leg. 12.

Nevertheleſſe in kingdomes, this holdeth not place in the blood royall, for *ſi filia regis nubat alicui duci vel comiti dicitur tamen ſemper regalis.*

JACOB RUFF in dict. leg. 1. lib. 12. Cod. de dignitat.

Likewiſe, the ſaid firſt rule touching the nobilitie of women married unto perſons ignoble, doth faile where they inherit thoſe dignities. For if a dukedome, earldome, or barony deſcend unto any woman, who taketh an ignoble man to husband, that husband ſhall not debaſe the wife, having ſuch dignities deſcended, but rather he in her right ſhall beare the title of ſuch dignities, eſpecially if he be intituled by the courteſie.

A third objection is this, It is ſaid that by the law of chivalry exerciſed within the realme, if a baron be created an earle, *&c.* that the heire apparent of ſuch earle, *&c.* ſhall after ſuch creation of his father beare the title of the barony, *&c.* but this is not uſuall by the courſe of the common law: therefore the deſcent of ſuch dignities are not to be guided by the common law. Object. 3.

The common law doth not diſallow any ſuch uſage, for it being the cuſtome of the realme, is the law of the realme. Howbeit the common law doth put a difference betweene ſuch heires apparent as carry thoſe titles lawfully in reſpect of the uſage; and ſuch others as have them by creation or otherwiſe, for ſuch heire apparent is no peere of the realme as thoſe by creation, or ſuch as have the earldome, *&c.* upon deſcent after the death of his anceſtor, and therefore as when the lord HENRY HOWARD, earle of Surry, ſon and heire apparent to THOMAS duke of Norfolke, was attainted, his triall was by jury of knights and gentlemen, not by barons, *&c.* for that hee was an earle by nativity, which in reſpect of tryall the law doth not allow. The like tryal chanced to the lord GRAY, who 33. HEN. VIII. was in the king's bench arraigned of treaſon, and appointed to be tried by a jury of knights and gentlemen, and not by peeres, *cauſa qua ſupra*; but he confeſſed the indictment and the jury were diſmiſſed, yet ſuch ſhall hold precedency of place at court, and in the preſence of their ſoveraigne, as is uſuall in that behalfe. Anſwer.

It is objected fourthly, that by the common law a man may not bee called lord of that he hath not; but by the law of chivalry a man may be created earle of a county, having no land therein: therefore differ. Object. 4.

It is true that ſome particulars of ordinary proceedings in the law doth differ from other proceedings concerning chivalry, and yet their difference is no other, then as one hand doth differ from another, both are hands, and both of one body. That part of the law which concerneth purparty, doth not allow a man to be called lord of that wherein he is no way owner in demeſne or ſeignory; but when you draw the law to the conſideration of dignity, the whole reſolution muſt reſt upon the patent of creation, wherein the name is appointed at the Anſwer 1.

Barle pur autre vie 31. Hen. VI. 29. pur Danby.

pleaſure of the ſoveraigne, for one may be earle during the life of another, if the creation be ſo.

Anſwer 2.

But I anſwer further, that it is not true that every earle muſt be earle of a place, nor every earle of a place earle of a county, nor that every earle of a county, hath nothing in that county whereby he is earle. For the better manifeſtation, conſider that originally within this realme earldome of counties in the antient Engliſh Saxon governours were not onely dignities of honour, but alſo offices of juſtice, for that they did further the adminiſtration of juſtice in the county whereof they were earles; they likewiſe had their deputies under them, the ſheriffe an officer, yet containing the name of his ſubſtitution in Latine *vice-comes*. Theſe earles in recompence of their travailes received a ſalary named by the third penny of the profits of the ſaid county, which continued long after the conqueſt, and was inſerted as a princely benevolence in the patent of creation, as by divers antient charters may appeare, which afterward were turned into penſions, for the better maintenance of that honour, and as appeareth by a booke caſe upon the pleading of the parent, whereby Hen. VI. created that worthy knight ſir John Talbot earle of Shrewsbury, which penſion is ſo annexed unto their dignitie, as that by any means of alienation it cannot be ſevered, and therefore in reſpect of ſuch penſions which were the third part of the profits of the county, or other ſumme in lieu thereof, ſome have not without probabilitie imagined, *quod comites nominabant capiend. fiſco Regis ſocii & comites fido participes eſſent Lamberd, &c.*

Ven. leg. Edgar regis de conſil. Lamb. Bo. n. 5.

Camden. 107.

Hen. III. dedit Huberto de Burgo 40. pro 3. denar. com. Cant. de quo eund. creavit comit. habend. ſibi, & hæred. de corpore Margeri. uxor Alexand. reg. Scotiæ.

13. Hen. III. in turr. Lond.

Of the ſingle earl (and not palatine) in England there have beene principally two kinds, but every one of them again ſubdivided into ſeverall branches, for either they take their names of a place, or hold their title without any place. Thoſe that take their names of a place are of two kinds, for either the ſame place is a county which is moſt uſuall, or elſe ſome other place and no county, as a towne, caſtle, or honour, *&c.* of which latter ſort ſome are more antient, having their originall even from the conqueſt, or ſhortly after: as the earledome of Richmond in Yorkſhire, Clarence in Suffolk, Arundell in Suſſex, all which had their originall in the time of the conquerours by donation of thoſe caſtles, *&c.* The earledomes of Bath, *temp.* Hen. VII. & Hen. VIII. erected in the family where it now remaineth, and the earledome of Bridgewater, whereof ſir Giles Dawbeney was created earle, *temp.* Hen. VII. Earledomes which have their titles without any place, are likewiſe of two kinds, either in reſpect of office, as is the earle marſhall, for it is granted in this or the like manner, *Officium comit. mareſcal Angl* with further words, (viz.) *A. B.* &c. *comit. mareſcallum Angl. creamus, ordinamus, &c.* by which it appears that the very office is an earledome.

33. Hen. VI. 29.

6. Hen. VIII. Dy. 2.

The ſecond ſort are earles by birth, and ſo are all the ſons of the kings of England, if they have none other dignitie beſtowed upon them, and therefore it is ſaid that John, afterwards king of England, in the life-time of his father Hen. II. was called *Count ſans terre*, before he was affied unto Alice, the daughter of the earle of Morton in France.

Object. 5.

A fifth objection is this, The law of chivalry proceedeth not in the accompliſhment of a combat in ſuch manner as is performed by the courſe of the common law, either in the writ of right by champion, or in the appeale by perſon; therefore the managing of the cauſes in chivalry, is not in the common law eſpecially, foraſmuch as our bookes doe acknowledge them to be determined by courſe of the civill law.

37. Hen. VI. 36.

37. Hen. VI.

Anſwer.

It is true, that the manner of performance of thoſe ſeveral kinds of combats is very different, and although the combat for honour, or upon the appeal for treaſon, be performed within England, according to the cuſtome of forraigne nations in ſome reſpects, although not altogether ſo, that almoſt every particular countrey hath a particular manner, by meanes whereof ſome men ſeeing the difference betwixt thoſe and the ordinary courſe of obſervance of combats for land in the writ of right, or for life in the appeale of felony, have therefore imagined that the proceeding in combat before the lord conſtable or lord marſhall in the

appeals

appeals of treaſon, or in cauſes of honour, betwixt ſuch perſons, as by the law may wage the ſame, ſhould be according to the courſe of the civill law, yet neverthelesſe, it muſt bee certaine that the civill law of the Romanes, is ſo farre off from giving any allowance thereto, as that it ſeemeth to forbid it. For that law of the chriſtian emperour CONSTANTINE is moſt notably alledged to this purpoſe by moſt of the learned doctors of the civill law, that have written *de duello*, the words of which law are theſe, *cruenta ſpectacula in otio civili & domeſt. quiete non placent.* And that which for diſputation ſake is alledged to the contrary, *ſi quis in colluſtratione vel pancratio vel pugiles dum inter ſe exercentur, alius alium occideret. Si quidem in publico certamine alius alium occiderit ceſſat, equalia, quia gloriæ cauſa, & virtutis non injuriæ gratia vitetur damnum datum*, is underſtood rather of juſts and ſuch like playes *de gladiatoribus*, as were uſuall among the Romans, all which were abrogated by this law of CONSTANTINE.

PARIS DE PUTIO, JOHANNES de deligatio JAC. DE CASTILIO, AND. ARCIATUS, JUL. FERRET. ANTHON. MASSEUS, cod. lib. 11. gladiatus lege unica. DIG. lib. 9. ad legem aqualiam, leg. 7. JUSTUS LIPSIUS de gladiatoribus.

Neverthelesſe among theſe warlike nations that invaded the Roman empire this kind of ſingle combate hath beene againe exerciſed in divers kingdomes, according to the cuſtome of every ſeverall countrey. Among the Lumbards it was permitted in nineteen caſes; their weapons being nothing elſe but the ſhield and the baſton. And yet of the uſe, or rather abuſe thereof, the king KATHARIUS ſeemeth to complaine, purpoſing to have abrogated the ſame. *Quia incerti ſumus de judicio Dei, & multos audivimus per pugnam ſine juſta cauſa ſuam cauſam perdere, ſed propter conſuetud. gentis noſtre Longobardor. legem impiam vetare non poſſumus.* In the ſeverall kingdomes of Sicilie, in Spaine, it hath been allowed in ſome caſes; likewiſe in France by the conſtitution of PHILIP LE BEAU, *anno* 1306. Likewiſe the emperour FREDERICKE did permit it in certaine caſes expreſſed in the treatiſe, *De conſuetud. feodorum* in the title *De pace tenenda & ejus violatoribus ſi quis hominem, ſi quis alium, ſi quis miles, &c.* In ſome places of Italy the battell hath beene allowed upon leſſe occaſion, of the which ALCIATUS maketh mention with ſome deteſtation.

J. de delignatio de duel. n. 5. JULIUS FERRET. de duel. n. 20. AND. ASCIATUS de duell. cap. 4. de legibus Longobard. tit. de monarchiis, n. 3. JUL. FERRET. de duel. n. 17. PET. GREGOR. lib. 48. cap. 161. n. 8. De pugn. cern. cap. 4. in fine.

Hereof it is evident that the order, manner and cauſes of ſingle combat are different in divers countries, and every countrey: that people following their owne cuſtomes and uſages being their peculiar law: and in this our realme, it was a tryall much more frequented in ancient times nearer the conqueſt, then ſucceeding ages; for it is evident by ſome antient records and plea-rolls yet extant of king STEPHEN, HEN. II. RICH. I. and king JOHN, that it was permitted to be waged in perſonall occaſions in caſes wherein men now commonly wage their law, and therefore in 37. HEN. VI. and 37. HEN. VI. fol. 20, NEEDHAM's opinions are much more agreeable to the truth, where both do affirme that ſuch waging of battell before the lord high conſtable and earle marſhall, is by the lawes of this realme, although it bee determined before them, and ſo great a ſympathy is betweene that court and others of common juſtice, as that the judges ſhall take notice of the proceedings, before the lord conſtable and earle marſhall, upon occaſion offered riſing in debate before them.

37. HEN. VI. fol. 36. 37. HEN. VI. fol. 20. GLAN. lib. 8. cap. 8. Que battaile partee gage en aſcun caſe en un' bre. de fac. judgement.

The ſixth objection is this, The common law in the trials of matters in ſentence doth proceed by a jury of twelve, but the law of chivalry in the triall of matters of fact concerning honour and armes proceedeth upon examination of witneſſes, which is according to the courſe of the civill law: therefore matters of honour are to bee determined by the civill (not common) law.

Object. 6.

In the tryall of matters in fact, the common law doth not alwayes proceed by a jury, for although they moſt properly lye in the connuſance of the jury, yet in other matters the law hath ordained ſome other manner of tryall, as they gage others by witneſſes, as if a wife bring a writ of dower, ſuppoſing her huſband to be dead, and the tenant ſaith that he is alive, whereupon they are at iſſue, this ſhall be tried by witneſſes onely, and not by jury. So likewiſe if land be recovered by default, and after brings a writ of diſcript, for that hee was not lawfully ſummoned in the former action, upon which they are at iſſue, this ſhall be tried by examination and depoſitions of the ſummoners, *&c.* and not

Anſwer.

8. EDW. II. triall 94. 9. EDW. II. judgement, 231. 33. HEN. VI. 9. 35. HEN. VI. 47.

14. Edw. I. 36. 37. 12. Hen. VII. viii. 42. 47. Hen. III. 15. Edw. II. coron. 385. vill. 32. 19. Hen. VI. 32. 48. Edw. III. n. 34. Hen. II. 46. Edw. III. 8. account. 121. 21. Hen. VII. 33. 39. Edw. III. 32. 7. Hen. IV. 24. 38. Edw. III. 27. 18. Edw. IV. 36. 2. Hen. IV. 17. 22. Hen. VI. 27. 3. Hen. VI. 6. 48. Edw. III. 3. 22. Asſeſſ. pl. 24.

not by the jury. In a writ *de nativo habendo*, whereby the plaintife claimeth the defendant to bee his villeine, the defendant ſaith hee is a freeman, and thereupon they are at iſſue; this ſhall not be tried by a jury, but by witneſſes, namely ſuch males as be of the blood and kindred of the defendant and not otherwiſe.

Some matters of tryall in fact are tried by view and inſpection of the court, and not by a jury, as the nonage of the plaintife, or defendant, alledging himſelfe to be within the age of twenty one yeares.

And the like tryall is of a mayhem, whereas in an appeale of mayhem the parties bee at iſſue, whether the hurt be a mayhem or no, ſometimes the courts of the ordinary of ſome other judge or officer, as in matters ſpirituall by certificate thereof from the ordinary, *&c.* And concerning matters done beyond the ſeas in the King's army, or concerning combate for honour, armes, *&c.* by certificate of the lord conſtable or earl marſhall, *&c.* whereby appeareth the weakneſs of the former argument, but in caſes uſuall the law alloweth the triall by witneſſes without jury; and therefore in the lord conſtable and earle marſhal's court, matters in fact concerning honour and armes (which lie not in the knowledge of the vulgar ſort) the common law grounded upon the beſt reaſon would it ſhould be tried by witneſſes or matters of record, as the cauſe ſhall require, and not that the ſame ſhould be tried by the conſcience of the vulgar people, being matters whereof they have no knowledge ſufficiently to diſcerne.

Hitherto have I wandred of purpoſe, to ſhew that our homebred law is ſufficiently able, and ought to trie all cauſes civil (other then marine) ſuch as are riſing with the body of the realme (and not in forraigne parts) whereby appeareth the excellencie of the common law, which maintaineth the particular juriſdiction of every particular court. For it is the common law (through the ſundry writs of prohibition which it uſeth) which keepeth every court within the compaſſe of his proper ſphere, and upholdeth the juriſdiction of the court of the earle marſhall. By that therefore which hath beene ſaid, two things may ſufficiently appeare.

1. Firſt, that the court of the lord conſtable and earle marſhall have had, and now the earle marſhal's court hath, particular juriſdiction originally and primarily to determine matters of controverſie concerning chivalry, dignity, honour and armes, and ſome other things acknowledged to belong to the ſaid court by the lawes and ſtatutes of our countrey.

Howbeit by a conſequent, but not originally, ſome other courts of ordinary juſtice may, as the caſe ſhall require, determine likewiſe ſuch like controverſies touching honour, *&c.* but not (*ea ſe* or *in ſua*) but rather by an adjunct, as by this example may appeare. If there bee two competitors of a barony, and during the time that their cauſe is litigious, the one of them is impleaded at the common law by originall writ, *cap. alz & plures* in a perſonall action, and thereupon an exigent is awarded, whereupon inſueth an outlawry, the party outlawed brings a writ of errour, and aſſigneth for errour, that hee having ſuch a caſtle to him deſcended, *&c.* holden *per baroniam*, whereupon his anceſtors have beene barons, and he himſelfe baron, no *capias* ought to be awarded againſt him, but in very ſpeciall caſes onely, therefore the outlawry erroneous. This matter of errour alledged, the court cannot conſider without due determination of the title of the barony, wherein if the court of the earle marſhall ſhould adjudge one way by any forraigne law in the ſame queſtion depending there, and the court of King's Bench adjudge another way by the common law of the realme: upon this writ of errour, there would enſue thereof a great confuſion and inconveniencie in the common-wealth, which the law will rather eſchew then any other miſchiefe whatſoever.

2. Secondly, therefore it doth appeare by the ſpeeches aforeſaid, that the common law ought to decide this controverſie, and that both courts ought to follow one and the ſame law, in as much as the common law is more ample than ordinary reports of caſes in the yeare bookes. For whatſoever is not diſagreeing from the law of God, and is conſonant to the lawes of nature and nations, allowed

allowed by the cuſtomes of our countrey, and not diſagreable to former preſidents, anſwerable to all good learning is the undoubted common law of the realme, which acknowledgeth no other author but GOD and nature, and whereof the judges in all ages have ever thought it honourable to receive all good helpes from every faculty of literature in the ending of difficulties queſtioned before them.

The proofe therefore in this controverſie to be produced ſhall be arguments of reaſon, allegations of authoritie, preſidents of time drawn out of records, hiſtories, ancient monuments, lawes and cuſtomes of our owne countrey, and furniſhed with ſuch other matters of neceſſary knowledge, as may tend to the better explanation.

It followeth ſomewhat to ſpeake in generall of the dignitie and degree of a baron, whereby the queſtion in hand may be the better conceived and be reduced to a more cleere determination, which for order ſake I will reduce to the conſideration of theſe principall heads.

1. The definition or deſcription of a baron.
2. The etimologie of the name of baron.
3. The antiquitie thereof, and the divers uſe of the name.
4. The diviſion and conſideration of the ſeverall kinds of barons.
5. The determination of certaine queſtions and difficulties tending to the more manifeſtation of the natures of the ſeverall kinds of barons.
6. And laſtlie, a declaration of the divers and ſundry priviledges allowed by the laws of this realme unto the barons and nobilitie of the ſame wherein the vulgar, *&c.* hath no participation.

Which things being diſcovered there will be laied open (as I doe conceive) a plaine way to the finall concluſion and reſolution of the queſtion in hand.

The definition or deſcription of a baron.

IT is a rule of law that *omnis definitio in jure periculoſiſſima. Rarum eſt enim ut non ſubverti poſſit.* And therefore I doe not often ſee any definition or deſcription of a baron. BALDUS thus deſcribeth a baron, *ut ſit quiſquis merum mixtumque imperium in aliquo Caſtro opidove conceſſione principis habeatur.* But this ſeemeth rather particular to ſome than generall to all, and therefore ALCIATUS uſeth theſe words, *nobis alia eſt ſententia quia ſciamus & in Germania, & Gallia ſolum barones dici quibus ſuper opidorum juriſdictionem hæc dignitas ſpecialiter conceſſa eſt.* Some thinke they are thoſe which are meant under the name of *valvaſores majores & capitanei.* In the ſecond booke, *de feodis de titulo, quis dicatur dux, &c.* And ſome others would have the dignitie of a baron to containe every noble dignitie under the earle. Some common lawyers there are which extoll the dignitie of a baron before that of earles, by reaſon of a ſubſcription to a decretall epiſtle directed *baronibus & comit. regin. Portugal.* They not conſidering that in another place in the ſame decretal it is more orderlie placed, *nullus imperator ſeu rex Romanus aut alius imper. aut rex, princeps, marchio, dux, comes aut baro, &c.* Other do equal the baron with the earle, affirming that *comiti baro prorſus equiparatur, &c. nullaque differentia niſi quod de comitat. non ſit inveſtitus, &c. haud quicquam comite cenſeatur inferior.* And thus every one of them have written conformably to the cuſtomes of his particular countrey.

Dig. l. 51. de regulis juris 203. omnis definitio.

BALDUS CANOTUS de ſectionibus.

ANDR. ALCIATUS de duello, c. 32. Refer. PET. GREG. in leg. jur. H. VI. capite 10.

Grande de ſupplenda neglig. plator. in ſexto.

But in this our common-wealth of England (methinks) a baron may be deſcribed in a generality anſwerable to every one of the ſpeciall kinds thereof in this manner. A barony is a dignity of nobilitie and honour next under the viſcount, and above the banaret and vavaſour with the title of lordſhip, holding the ſame place with us as did the *patricii* or ſenatours under the Romans.

For the better underſtanding whereof conſider that *nobilitas* generally ſignifieth matter of note, but ſpecially it is applyed to expreſſe the reward of virtue in honourable meaſures. *Sc. generis claritatem*, of which there are two kinds, *nobilitas major*, (viz.) a lord at leaſt, and *nobilitas minor*: but our Engliſh tongue expreſſeth the higher kinde. A barony therefore is a dignity of nobility and honour. A dignitie of nobilitie to exclude all other kinds of dignities, of honour, to exclude the leſſer kind of nobilitie, wherein gentlemen are comprehended. Anſwer 1. Dignities of nobilitie are with us of two kinds, ſome are dignities of nobilitie, honour, or parcell of the name of thoſe that are ennobled thereby, ſo that in publicke proceedings of law, it is parcell of their name, and may not any more be omitted then their ſurname, ſuch are the nobilitie of dukes, earles, vicounts. Anſwer 2. Others are dignities onely, and not parcell of the name, and ſo is the baron, and therefore if an action bee brought by, or againſt a baron, who hath but a barony onely, it is not requiſite to make him baron, which in all other dignities being parcell of the name is otherwiſe moſt curiouſly obſerved, otherwiſe the writ ſhall abate; thus much of the dignity of a baron, now of the etimologie of the name.

8. Hen. VI. 10.
32. Hen. VI. 30.
Littlet.

2. The etimologie of the name baron.

MANY wits have laboured to yeeld the etimologie of the name, wherein following their own fancy there hath beene bred much varietie of opinion, ſome men inducing the Greeke, importing gravity, others have ſought a Latine author to father it upon, alledging Cicero ad Atticum, where they find printed in ſome copies theſe words, *apud patronem & reliquos barones te in maximam gratiam poſitum*, where in other copies in lieu thereof is read *barrones*, and ſo by others, the ſame is acknowledged to be nothing but a corruption whereof Alciatus ſpeaketh, *&c.* And therefore Rasius calleth the word *vavaſores & vaſſallos*, among the which they intended barons to be included, *vocabula illota*. Others would derive the word from a certaine war-like auncient people inhabiting ſome parts of *Spaine*, called *Barones*; or as Strabo and Ptolemy doe name them *Barones*, whoſe habitation was ſcituate upon the weſt-ſide of the river Euberus, who guarded the perſons of the Roman governours, as the Switzers are now uſed for the guarde of certaine princes. Others derive their name from the manner of building of thoſe houſes that were given to barons to be holden and were the head of their baronies. *Quod erant ejuſmodi domus undique occluſæ & ſubſtructis turribus & barris.* Some thinke it to be an Hebrew name ſignifying mercenary ſouldiers, ſome would fetch it merely from the Latine, *barones tanquam pares homines*; but the moſt probable derivation is drawne from the northerne peoples language, which invaded the Roman empire, among whom a baron ſignified a man of ſtrength, as by the lawes of the Lombards, and as by the words yet remaining without much variation in every one of the ſaid three tongues, the word *varon* and *baron*, is uſed inſtead of the Latin word *vir*, and with this agreeth parcell of the auncient law of Canutus, *Quod eſt ſumma cenſus diverſarum dignitatum ſi minoris vironis, id eſt, baronis duæ libræ: ſi majoris 4. &c.* And therefore in the Lombards lawes, compiled by K. Rotharis, the word baron is thus uſed, *ſi quis ex baronibus noſtris ad nos voluerit venire, ſecurus veniat & illæſus ad ſuos revertatur.* And in thoſe old lawes called, *Repnaria ſi quis hominem regni tabularium tam baronem qui fœminam abſtulerit, &c.* Where the word doth ſignifie the ſame that the word *vir* doth in the Latine; therefore Bracton not unfitly uſeth it *ſunt & alii potentes ſub rege qui dicuntur barones (hoc eſt) robur belli.*

Lib. 5.
Alciat. lib. 5. cap. 16. & 32.
Sim Shaldus in lexico juris,
Ptol. lib. 2. cap. 6.
Jo. Brekins de conſuetud. gallorum.
Petr. Gregor. ſyntax. lib. 6. c. 10.
Tit. 8. in al. lib. tit. 9. Tit. 60. 54.
Bracton. lib. 2. c. 8.

The

The antiquitie of the dignitie of barons, and the ſundry uſes of the name.

IT ſeemeth that the dignitie was more auncient then the name, for in the auncient conſtitution feudall of the Lombards, there is not mention made of the name of baron, howbeit the learned interpreters underſtand that dignitie to be comprehended under *valvaſores minores*, or *valvaſini*, or *valvaſores minimi*, being another kind inferiour to *valvaſores majores*, which were alſo called *capitanei* (*barons.*) The like dignitie before the conqueſt, had thoſe that were called *thanes*, of whom is mention made in the lawes of king ETHELSTAN, and of this there were two kinds, *thani regis & thani aliorum*, and therefore in the records of doomeſday in the deſcription of Hertfordſhire, and therein of the mannor of Brackins it is thus written; *hoc maner' tenuit 2. taggas horum unus homo regis* EDW. *& alter* ASGARI *ſteleri.* This word *thani* was diverſly uſed by the antient Saxons; ſometimes they ſignified thereby a nobleman, as by the baron; ſometimes a freeman, ſometimes a magiſtrate, ſometimes a ſervant attendant upon a man's perſon, which they ſignified by the ſubſcription of the antient regall charters by the word miniſter, as *ego miniſter* A. B. *præſens auſcultavi*, or *interfui*, or *inſpexi* of the king's *thanes*. I find thus much written in the ſame records, *Thanis vel miles regius dominicus moriens pro relevamento dimittebat regi omnia arma ſua, & equum unum cum cella, & alterum ſine cella, quod ſi eſſent ei canes vel accipitres preſentabunt regi ut ſi vellet acciperet.* That the like was done alſo by the *thanes* of others, as of noblemen, earles, and others, appeareth by an antient Saxon teſtament of one ARFRIE an earle, which is brought to light by maſter LAMBERT, in the deſcription of Mephem in the perambulation of Kent in thoſe times. The *thanes* were for the moſt part deemed noble, and held one and the ſame dignitie, as the barons doe. The word *thanes* being uſuall in that ſence, not onely among our Engliſh Saxons, but alſo with the Scots and Danes, as concerning the Scots, HECTOR a poet writeth, MALCOLMUM *regem titulo comitatum honeſtaſſe*, and as touching the Dane, the *thanes* among them are yet in uſe, as *liberi Domini*, ſuch as are the barons; by this it may appeare, that the name of baron was not uſuall among the ancient Engliſh Saxons, for that in the ſubſcription unto the graunts of kings, whereunto with the ſigne of the ✝ were ſubſcribed the names of all noble perſonages, as well temporall as ſpirituall, the ſaid word baron cannot bee heard of; but in an antient charter made in the name of ZOLPHER, ſometimes king of Mercia, unto the church of Peterborough, having theſe words; *præcipimus quod prædict. monaſt. & dona ſua ſint habenda, &c. ab omni diminutione & exact. comitum, &c.* Likewiſe to this effect have I ſeene in an old booke belonging to the monaſtery of Weſt. EDG. *Rex concilio habito infra baſilicum Weſtm. preſidente eo cum filio ſuo* EDW. *&* DUNSTANO *archiepiſcopo, & univerſis epiſc. & baronibus ſuis dictam eccleſiam de Weſtm. renovavit.* Nevertherleſſe, the name of baron was not much uſed within the realme untill the Norman conqueſt, after which it grew very frequent. In which time the notable caſes, *&c.* of the realme were debated before him and his barons, and by them adjudged as by divers monuments extant may appeare, whereof one is in this manner in the record of doomes-day, *quidam prepoſit.* BRUMANUS *eo tempore* R. EDW. *cæpit conſuet. de extraneis mercatoribus, &c.* Alſo 21. EDW. I. doth ſet forth by exemplification an act of parliament made in a cauſe between the abbot of Saint Edmondſbury, and ARFAST ſometimes biſhop of Thetford, which ſee was afterwards tranſlated by HERBERT to Norwich concerning the viſitation of the ſaid monaſterie, which parliament was holden by the ſaid King, the archbiſhop of Canterbury, and all other the biſhops, earles, *&c.* appeareth. Moreover in the record of doomesday (for Berkſhire) in the deſcription of Doneſh is declared, that at the time of the ſaid record there were at Warham, certaine barons lands twenty houſes ſtanding, and ſeventy deſtroyed; by which appeareth that both name and dig-

Lib. 2. feud. titulo 10. lib. feud. 1. 16. lib. 1. feud. 17.

LAMB. de regimine Saxonum, fol. 71.

21. EDW. III. 6.

nitie of a baron was ſufficiently known in the time of the conqueſt, and as touching the uſe of the name, the word baron ſeemeth to be frequent among the Norman conqueſts of this realme. In lieu of the word *thane* among the Saxons, for as they in a large ſignification did ſometime uſe the ſame to the ſence, *&c.* of a free man borne of free parentage, *&c.* and ſo did the Normans uſe it; and therefore called their free citizens of their beſt eſteemed cities and burgeſſes, *&c.* by the name of barons, and therefore the citizens of London were called barons Lond. in divers auntient monuments, of whom alſo BRACTON writeth, *per barones Lond. &c.* So alſo there are diverſe charters whercin mention is made of ſuch like barons, as the barons of Warw. in doomsday, and in our time the burgeſſes of the five ports are called barons, and divers of the nobility, barons, as well ſpirituall as temporall, did in antient time ſet in the exchequer in judicature. Moreover, as our Saxons had two kinds of *thanes*; the like hath been obſerved of barons among the Norman conqueſts, for the kings of this realme have had their immediate barons being the peeres of this realme: ſo certaine other noblemen, eſpecially the earle palatine and earle marchers, whoſe counties have confined upon the coaſts of the enemie, have had under them a kind of barons, as namely under the county palatine of Cheſter were theſe barons, the barons of Hatton, Monbatte, Mulbanke, Shipbrooke, Malpas, Maſy, Kinderton, Stockport, *&c.* The earledome of Pembroke, being firſt erected by ARNULPHUS MOUNTGOMERY, that conquered ſome part of the county, and therefore the earle thereof being an earle marcher had alſo under him his barons; for it appeareth by the parliament rolles 18. EDW. III. that the baronies of Haverford, Cammois, Rochie, and Caſtlegoton, were antiently belonging to the juriſdiction of the earledome of Pembroke, and had their chancery and ſeals, as other barons upon the marches uſed to have. Hereof alſo it followed not onely in this realme, but alſo elſewhere, that earles had under them ſuch as they called their barons, who held under them lands in knights ſervice and in the defence of their lords, and therefore in the regiſter of the monaſtery of St. JAMES of Northampton, it is found that SIMON earl of Northampton, did get and confirme unto the ſaid abbey, *Omnia dona, &c. quæ barones ſui, &c. infra burgum & extra North. illis dederunt.* Many old charters alſo are extant, whereby it appears, which now time hath worne out of memory, and yet the knowledge thereof ſerveth to good purpoſe; namely, to reconcile the different opinion of ſome men concerning the law, for 20. EDW. III. THORPE holdeth opinion that none can hold *per baroniam* but of the King onely, and that no ſubject can aliene his land to another to hold of ſuch alienor, *per baroniam*, which ſome ſerjeants denyed, to the which opinion of ſergeant WILBY, other judges agreed, adding further, that before the ſtatute of *prerog. regis*, thoſe that held *per baroniam* might aliene ſome parcell thereof to be holden by other, ſince which is evident (ſaith he) in this, that the antient baronies doe conſiſt moſt of ſervices which began by occaſion of ſuch ſuites as aforeſaid. The aſſertion of both the ſaid judges is good law, for none can hold *per baroniam* but of the king, queen, *&c.* monarchs of the realme, and againe it is true that in ſome kind of feme a man may hold *per baroniam* of a ſubject, but *diverſis reſpect. ergo diſtinguendum eſt.* None can hold *per baroniam* as a peere of the realme, and in courſe of perfect nobilitie but of the crown onely. For of this barony BRACTON underſtandeth, when he ſaith it is the ſtrength of the realme, and theſe barons according to the law *Senderl*, are theſe, *capitanei* or *valvaſores majores* there ſpoken of: for *qui a principe vel ab aliqua poteſtate de plebe aliqua re per feudum & veſtitum, is capitaneus appellatur qui proprie valvaſores majores olim appellabantur*, and of the queſtion ariſing concerning theſe baronies, the monarch of the realme or the judges, for that thoſe barons are immediate *à rege in feudali*, as for others they be barons *ex ſimilitudine*, and therefore thoſe which in the ſaid lawes feudall are called *valvaſores & valvaſini*, for the words are theſe, *qui vero a capitaneis antiquitus beneficium tenent valvaſores ſunt, qui autem a valvaſoribus feudum quod a capitaneis habebatur, ſimiliter acceperint.*

BRACTON, 272.

FLETA, lib. 2. cap. 24. the judges of that court have been from antient times, and yet are called barons of the exchequer.

7. HEN. VI. 35.

17. EDW. III. inter placita.

18. EDW. II. Aſſiſ. 30.

20. EDW. III. Aſſ. 122.

2. EDW. III. Aſſ. 124. Prerog. cap. 7.

Lib. 2. feudall. tit. 10.

BRACTON, lib. 1. cap. 8.

ceperint valvaſini, id eſt, valicas minores appellantur. The uſe of this diviſion within England, hath beene in no other manner then this, the *valv. majores* may be underſtood to be our barons and peeres, for in ſuch manner the interpreters of the law feudall have expreſſed the ſame. The ſecond ſort is the *valv. proprie* of which degree BRACTON alſo ſpeaketh: *ſunt & alii qui dicuntur valvaſores magni dignitat. valvaſor melius dici poterit, quia vas ſortitum ad valetudinem.* Howbeit the civilians doe give another etimologie in this manner, *valvaſor, quaſi ad valvas ſtantes, id eſt, tanquam ad valvas tentorii dum ſunt in bello excubantes ad quamlibet injuriam propulſandam*; and of theſe *valvaſi*, which are properly the *valvaſi* indeed, mention is made 13. EDW. III. For they may be impannelled in a jury among the knights, where a baron is party. The third ſort called *valvaſini* in ſpecial name we have them not in uſe, nevertheleſſe are they in nature the ſame that we call lords and proprietors of mannors, who alſo in reſpect of their tenants were oftentimes in antient remembrances called barons, and their courts, court-barons; for of theſe GLANVILL ſpeaketh, *præterea record. habeant minores cur. de his quæ in eis facta ſunt, &c.* Hence it is that theſe divers degrees have beene obſerved in forraigne countries; by the French conſtitution it is ordained, that *ſi quis aut vicecom. aut baro voluerit fieri comes, neceſſarium ducunt eum habere in ſua ditione, quatuor baronias & tres caſtellan. quarum quælibet habeat ſaltem* 10. *nobiles ſibi ſubditos qui eum comitari poſſunt.* Again, in *tit. comit. nullus tranſeat niſi habeat duas baronias, & tres caſtellaneas, aut ſaltem unam baroniam & ſex caſtellaneas unitas & nomine feudi poſſeſſas & inveſtitas a rege ſub uno titulo.* In Flanders, which was an earldome of regall conſtitution, there was in auntient time an earldome the earl whereof was intitutled *comes Aleſtanus*, the earl of Elſton, who although his juriſdiction was particular to himſelfe from the emperour, yet had he under him five barons, the memory of which doth remaine; it hath beene heretofore a common received opinion, that every earldome in times paſt had under it ten barons, and every baron ſeven knights fees holden of him, and ſome are of opinion, that thoſe which had fourteene knights fees were uſually barons; but of that more hereafter.

SHAND. lexic. in verb. valve. PET. GREGOR. lib. 6. cap. 11. 13. EDW. III. Chal. 115. GLAN. lib. 8. cap. 10. fol. 64. PET. GRE. in lib. 6. cap. 9. Gall. 17. Angl. 1579. JAC. MERCANT. Fland. 16. cap. 1. de Aloſto.

It reſteth now for the more explanation of the uſe of the name baron, that wee call to remembrance that which is before ſpoken, that the cuſtome of our countrey is, that if a baron be created an earle, the eldeſt ſon of the ſaid earle, in the life of his father, taketh upon him the title of the barony, although he want the priviledges belonging to a baron. Laſtly, that is not to be omitted, that by the generall name of the barons of the realme, wee underſtand the whole body of the nobility, and hence it is, that the civill warr concerning the liberties granted in the great charter, both in the time of king JOHN, and HEN. III. proſecuted by the whole nobilitie, ſome few excepted, are called the barons warres; thus much of their antiquitie, *&c.*

Having before ſhewed the ſeverall uſes of the word baron, we are now to adhere onely to the proper ſignification thereof, whereby there is denoted to us, an honourable perſonage next under the vicount, and therefore wee are to ſet forth a diviſion.

Barons honourable are of three kindes, by tenure, by writ, by creation or patent; as for the barons by preſcription, they are all one with the barons by tenure, or thoſe who antiently, and time out of mind, have been called to the parliament by writ, and otherwiſe none.

Barons by tenure are thoſe which doe any honour, *&c.* as the head of their barony, *per baroniam*, which is called graund ſerjeanty; theſe are of two ſorts, ſpirituall and temporall.

The barons ſpirituall *per tenure*, are and were thoſe eccleſiaſticall perſons, which held the principall part of their ſpirituall living *per baroniam*, and ſuch were alſo of two kinds; firſt, the archbiſhops and biſhops of this realme, who

doe hold the principall part of their temporalties *per baroniam*. Secondly, ſuch abbots, priors, *&c.* which were extinguiſhed by coming to the crowne by the ſtatute.

Barons temporall, are ſuch as hold the chiefeſt part of their poſſeſſions, as ſome honour, caſtle, *&c. per baroniam* of the crowne, all which honourable barons, holding their baronies of the crown, were in antient time in reſpect of theſe their tenures, called by the monarch of this realme to aſſiſt him in counſell in parliament.

But firſt it ſhall be requiſite to prove every part of the diviſion, namely of barons by tenure, and firſt of ſpirituall.

It is evident, that the archbiſhops and biſhops of the realme in the Saxon dayes, as well during the time that it was divided into divers kingdomes, as alſo after the uniting of them into one monarchy, were called to the parliament, not ſo much in reſpect of their tenure (for it was then by *frankalmoigne*) but eſpecially for that lawes are then moſt commendable, when they are grounded upon the law of GOD, and therefore our wiſe anceſtours called to their generall counſell or *wittenaymot* or court of wiſe men, as they called it, thoſe principall perſons of their clergie, which by their profeſſion, *&c.* might adviſe them to frame their lives anſwerably, *&c.*

Hiſt. INQUEST. ab. de Croland. in ſubſcript. chartre BERTOLPI regis, fol. 490. Ibid. 492.

Nevertheleſſe, ſhortly after the Norman conqueſt, the Conquerour altered tenures, being before *frankalm.* not without ſome complaint and griefe of the clergie, of which MATTH. PARIS thus writeth *anno* 1070. which prove that biſhops then held *per baroniam.*

MATT. PARIS, fol. 6.

In the conſtitution held at *Clarendon tempore* HEN. II. *anno* 1164. which conſtitutions contain certaine recapitulations of the prerogative of the King and his people then ſought to be infringed by the pope and his clergie, it is thus expreſſed in the 11. article, *archiepiſcopi & epiſcopi, & univerſa perſona regni qui de rege ten' in cap. habeat poſſeſſion. ſuas de rege ſicut baroniam, & inde reſpondeant juſticiariis, &c. regis & faciant omnes conſuet. regias, & ſicut cæteri barones debeant intereſſe judiciis curiæ regis cum baronibus quouſque, perveniatur ad diminutionem membrorum vel mortem.* Here we ſee the preſence of the biſhops in the parliament in reſpect of their baronies, *quouſque perveniatur ad diminutionem, &c.* For ever unto our times, when queſtion is had of any attainder of any peere in parliament, they depart the higher houſe, and make their procurators, for by the decrees of the church, they may not be judges of life and death.

Called the Aſſiſ. of CLARENDON in old writers.

10. EDW. IV. 6.

De rot. parliament. 11. RICH. II. anno 9. in turr. Lond.

Of the baronies of biſhops, and of their homage for the ſame, thus writeth GLANVILL, who *tempore* RICH. I. was chiefe juſtice, *epiſcopi vero conſecrati homagium facere non ſolent domino regi etiam de baroniis ſuis ſed fidelitat. cum jurament. interpoſit. ipſi præſtare ſolent; elect. vero in epiſcopos ante conſecrationem ſuam homag. ſua facere ſolent.* Of theſe alſo BRACTON ſaith, *ſi autem terr'a data fuit eccleſiaſt. cathedral. vel conventuræ non jacebit aſſiſa utrum quamvis in habitum, &c. eleemoſinam.* Of the which he reciteth a judgement, *p.* 15. *temp.* HEN. III. which was given in a writ of errour upon a judgement in eire betweene the prior of Lewes and GILB. DE AQUILA, and he yeeldeth the reaſon thereof.

Lib. 9. fol. 66.

BRACTON, lib. 4. cap. 2. 287.

BRACTON, lib. 5. cap. 23. fol. 427.

Againe, he in another place, ſearching out the reaſon why the certificate *excommunicat. ſpiritualium*, any ſpirituall judge other then the archbiſhops and biſhops of this realme is not by any law to be admitted, hee yeeldeth this reaſon ſo, that none of thoſe other ſpirituall judges are compellable to admit the action as are the archbiſhops and biſhops, *Quia rex in epiſcopis coercionem habet propter baroniam*, meaning thereby that upon their contempt the king doth ſeize their temporalties. Likewiſe about 46. EDW. III. the biſhop of Chicheſter leaſed for life a mannor, parcell of his barony, with licence of the King; this alienation was a forfeiture, becauſe parcell of his barony.

46. EDW. III. forf. 8.

13. EDW. III. Chal. 115. enqueſt. 43.

Many more authorities might be cited out of records and bookes of law, in regard whereof they have in antient time been named peeres of the realme, and have

have enjoyed other priviledges that peeres doe; the triall by peeres (onely in matters of treaſon or miſpriſion, *&c.* excepted) whereof STAMFORD giveth the reaſon, *non ratione nobilitatis ſed ratione officii.* Another reaſon why biſhops are not tryed by peeres as other peeres are, is becauſe they cannot paſſe upon the life of any man, being thereunto forbidden by, *&c.* and therefore the peeres cannot trie them, for that this kind of tryall ſhould be mutuall if the offence give occaſion, inſomuch that their cenſure is upon their honour without oath, *&c.*

29. Edw. III. 42. 39. Edw. III. 30. 31. Edw. III. 94. 43. Edw. III. 21. Edw. IV. 77.

The like of thoſe abbotts, priors, *&c.* which held ſome part of their land *per baroniam*, who were alſo called peeres of the realme, therefore no *capias* againſt them; and therefore ſome of them that held not *per baroniam* being ſummoned to the parliament upon their petition were diſcharged, whereof there are ſome preſidents extant.

27. Hen. VIII. enqueſt. 99. 2. Mar. 46. 35. Hen. VIII. Triall. 142. Stan. 1536. 1. Hen. IV. 13. Hen. VIII. 11.

The abbot of St. James neer Northampton, in 12. Edw. II. was ſummoned to the parliament, which was the ſame yeere holden at Yorke, who becauſe neither he nor his predeceſſors were ſummoned, and becauſe he held onely by *frankalm.* hee by his procurator exhibited his petition to the lord chancellour, a monument whereof I have ſeen in this manner, Abbas ſancti Jacobi North. irrotul. de novo in cancell. dom. regis inter citand. ad parliamentum & non tenet per baroniam nec de rege in capitem ſed tantum in pura & perpetuam eleemoſinam, & nec ipſe nec predeceſſ. ſui unquam in cancellaria irrotulat. fuerunt, nec ad parliamentum citat. huc uſque unde idem abbas petit remedium. Ad cujus billam execut. dominus cancellar. cum ſuo conſilio de cancell. ordinavit quod nomen prædict. Abbatis a regiſtro cancel. deleretur & ita pluribus circumſpect. idem abbas eſt abſolutus; facta eſt hæc excuſatio per viſum domini JOHANNIS DE OTH. epiſcopi Elien. cancel. domini regis, domini WILLIELMI DIRMINS tunc cuſt. rotulorum & al'.

21. Edw. III. 88. 36. Hen. VI. 7. Hen. VI. 108. 7. Hen. IV. 2. 26. Hen. VIII. 7. 21. Edw. III. n. 50. Out of the regiſter booke of St. James of Northampton.

A like petition was made by the abbot of Leiceſter unto king EDW. III. and thereupon he obtained a writ of diſcharge in this forme; EDWARDUS Dei gratia, &c. ſalut. ſupplicavit nobis dilect. nobis in CHRISTO abbas de Leyceſt. in abbatia ſua predict. per ROBERT. FITS, ROBERTI DE MELLENT dudum com. Leyc. fundata fuiſſet in puram eleemoſinam, & advocat. ſibi preornat. ad manus domini HEN. quondam regis Angl. proavi noſtri per forisfacturam, SIMON. DE MONTEFORTE tunc com. Leyc. & proin ejuſdem darent, idemque abbas aliique terras ſive tenta de nobis per baron. ſeu alio modo non tenueat per quod ad parliamentum venire teneatur, nec aliquis predeceſſorum ſuorum ante 49. annum Domini proavi noſtri part. forisfacturam dicti SIMONIS, quo anno omnes abbat. & priores regni noſtri ad parliamentum proavi noſtri tunc tenturum & voluntarie ſummoniti fuerunt; ſummonit. extiterit, velimus ipſum abbat. de hujuſmodi adventu ad parliamentum facere exonerari, & quia viſis chartis & confirm. de terris, & tentis eidem abbati dat. & conceſſis in rot. cancell. noſtri irrotulat. compertum eſt, quod dicta abbat. prædict. ROBERTI FITZ-ROBERT com. Leyc. fundat. erat in pura eleemoſina, & non invenimus quod prædict. abbas aliquas terras de nobis tenuit per baron. &c. nec quod predeceſſor. ſui ad alia parliamenta progenitorum noſtrorum ante prædict. 49 annum dicti proavi noſtri, aut poſt modum continue, ſed vicibus interpellatis ſummonit. fuerint, nolentes ipſum abbat. indebite ſic vexari conceſſimus pro nobis, &c. quod idem abbas, &c. de veniendo ad parliamentum, &c. quieti ſint; ita ſemper quod dictus abbas, &c. in procurator. ad hujuſmodi parliamenta per clerum mittenda conſentient, & ut moris eſt, expenſis contribuant eorundam. In cujus rei teſt. &c. 15. Febr. anno 26. & Franc. 13. per petition. parliament. Whereby it appeareth, that barons by tenure are ſummoned in reſpect of their tenure.

Ex rot. patent. 26. Edw. III. pars 1. (2) M. 22. in turri London.

As touching the temporall barons by tenure, mention is often made of them in the year-books, records, &c. as GLANV. lib. 9. cap. 6. *baroniam retinet rex donec hæres, &c.* Which reliefe for baronies was at that time incertaine, and rentable at the King's pleaſure, but ſuch incertainty of reliefe was brought to certaintie by the ſtatute of *magn. chart. ſi quis, &c. de comitat. integro per c. lib. hæres baron. per c. mercas, hæres mil. pro feodo mil. c. ſolidos.* Thus much of the temporall baron and his reliefe.

GLAN. 9. c. 6.

Mag. char. cap. 2.

In

In 3. HEN. III. there was acknowledged an auncient prerogative belonging to the crowne and uſuall from the conqueſt in theſe words, and ſo reported by FITZ-HERBERT, *quod ſi aliquis baron. obiiſſet, & non haberet hæredem niſi filias & primogenit. filia marit. ſit in vita patris rex daret poſt natum filium quod remaneret in hæreditat. patris, &c.* BRACTON writing of *eſſoignes*, delivereth this learning, that if any baron that holdeth *per baroniam* hath his abſence excuſed by *eſſoigne*, he which caſteth ſuch *eſſoigne* ought to find ſuretie that it is true, but in the caſe of common perſons that ſhall reſt upon credit, and the integritie of the *eſſoigner*; his words be theſe, *ideo ne eſſoniator, &c.* by which appeareth that there are temporall barons by tenure.

Bract. lib. 5. tract. 2. cap. 2. fol. 337.

48. EDW. III. 30. Now let us deſcend to the other authorities; ſir RALPH EVERDON, knight, being one of the barons of the realme *tempore* EDW. III. was impannelled in a jury to their priviledge, and therefore for his exemption procured a writ directed to the judges of the Common-Pleas, before whom the jury was impannelled, by which they were commanded to diſcharge the ſaid ſir RALPH, whereupon BELKE chiefe juſtice of the Common-Pleas examined him whether he held *per baroniam* or no, *&c.* and whether he had come to the parliament as a baron, to which he anſwered, that he held by a certaine part of a barony, and that his aunceſtors had likewiſe ſo done upon good advice, by means whereof he was diſcharged, in which caſe is proved that there are barons by tenure, and that they, in regard of their tenure, ought to be ſummoned.

Reg. 179. 14 & 15. HEN. VIII.

35. HEN. VI. 46.

Inter rot. parliament, 27. HEN. VI. In the parliament *temp.* HEN. VI. there was a controverſie between WILLIAM earl of Arundell, and THOMAS earl of Devon. for their places in the King's preſence as well in the parliament, *&c.* whereupon there were divers writings, *&c.* declared between them in the ſaid parliament; the conſideration whereof was committed by the King to certaine lords of the parliament to decide the ſaid title with all incidents thereto belonging. Nevertheleſſe, it being not accordingly performed, and the ſaid controverſie remaining undecided in the next parliament the ſaid King was pleaſed that the judges ſhould examine the ſaid matter, who having conſidered the allegations of either part, and alſo an act of parliament made 11. HEN. VI. concerning the ſame in the behalfe of JOHN earl of Arundell decided the diſpute; they certified, firſt, that the controverſie was never matter of parliament. 2. That in the ſaid act whereby it was ordained that the ſaid JOHN ſhould have his ſeat in the King's preſence as well in parliament, as elſewhere, as earl of Arundell, there was no mention made of his heirs but of himſelf. 3. That to the caſtle, *&c.* of Arundell the name, *&c.* of earle then was, and time out of mind had been united and annexed, and by reaſon thereof the ſaid earl did hold that name and not by creation, all which being ſo certified it was enacted that the ſaid WILLIAM earl of Arundell ſhould retaine his preheminence by reaſon of the caſtle as worſhipfully (for ſo are the words of the act) as any of the earls of Arundell had done above the earl of Devon, *&c.* ſaving alwayes to the ſaid earl of Devon his lawfull ſuite to the King in his high court of parliament for his right, by which preſident we do plainly ſee that the dignitie of that earl was *annexa feodo*, and an earldome by tenure, in regard of which the earls thereof have had their place in parliament, from whence may be deduced that the like may be obſerved of baronies by tenure as of this earl by tenure; I would wiſh thoſe that denye baronies by tenure to conſider the ſtatute of *Weſt. 2. cap.* 42. where the fees of the earl marſhall and lord chamberlaine are expreſſed, which are to be taken by them upon the homage of every baron by tenure, where he holdeth by a barony, or by leſſe, and leſt any ſhould thinke that this ordained by the ſtatute ſhould concerne any other marſhall or chamberlaine, FLETA will put him out of doubt, which applyeth to this purpoſe.

FLETA. lib. 2. cap. 5.

But e're wee proceed further, there ariſeth a quere.

If

If a baron by tenure grant the honour holden by barony, whether ſhall ſuch grantee have the ſaid dignitie or otherwiſe?

THEY which deny baronies by tenure, doe uſe this as their principall reaſon, firſt, if there be any, then the grantee of them muſt hold by the ſame tenure as their feoffer, but that was *per baroniam*: And therefore if ſuch grant bee made to perſons ignoble, they then ſhould bee noble, which were abſurd. Argument ex parte neg. 10. 2. ca. 1. Qu. emp. terrar.

Secondly, it is very evident that many antient mannors, which in antient time were holden *per baroniam*, are now in the tenures of meane gentlemen, who may not dare to challenge it.

Thirdly, ſome antient barons there are, which have ſold thoſe caſtles, *&c.* and yet retaine their dignitie, and have been, and are ſummoned to parliament notwithſtanding.

For the better anſwer, it ſhall bee convenient to exhibit certaine neceſſary diſtinctions, and thence to draw infallible diſtinctions, and then authorities and preſidents.

Firſt, therefore, if a baron by tenure doe aliene the ſame, either he doth it without licence, or elſe with licence obtained. If without licence, then the concluſion is certaine that it is forfeited, and to be ſeized to the King, and the dignity extinguiſhed in the crown, from whence it was derived.

The reaſon is out of BRACTON, becauſe baronies are the ſtrength of the kingdome, and if they ſhould be aliened without conſent of the Soveraigne, baſe perſons innobled without deſert, *&c.* for where the thing ſo aliened is an honour, it differeth much from the ordinary tenure in cap. whereof if the tenant make alienation without licence, he is onely to make a fine by the ſtatute. 50. EDW. III. c. 10.

For authoritie GLANVILL ſaith, *Notandum eſt quod nec epiſcopus, nec abbas quia eorum baroniæ ſunt de eleemoſina regis non poſſunt de dominicis ſuis aliquam partem dare ad remanentiam ſine aſſenſu, & conſenſu domini regis.* GLANV. l. 7. cap. 1. Mag. char. cap. 31.

In 20. EDW. III. certaine land being parcell of the baronie of Brembur was aliened by W. DE BRUCE, the baron thereof without licence, and in the argument of a caſe concerning the ſame, GREENE ſaid that parcell of a baronie, *&c.* held in chiefe, cannot bee aliened without his licence. Againe, 46. EDW. III. it was found by office, that W. biſhop of Cheſter had leaſed for life to Jo. PESTON a mannor, parcell of the baronie without licence, and reſolved that it was forfeited, but by mediation of the ſaid counſell, the biſhop ſubmitted and made a fine, and ſeverall *ſcire facias's* iſſued againſt the perceptors of the profits to anſwer the king. Thus much of alienation without licence. 20. Aſſ. 1. 8. 20. EDW. III. Aſſ. 122. & 224. 46. EDW. III. forf. 18.

But of the other part, if a baron by tenure doth aliene by licence wee muſt diſtinguiſh, for it is either made for the continuance of his barony, *&c.* or elſe for ſome other conſideration.

That if any ſuch alienation be made for the continuance of the barony in the name, then have the iſſue male with the caſtle, *&c.* retained the dignitie of a baron, and hereof have the heires generall, or next heires females beene excluded; and for proofe of this aſſertion many antient preſidents may be produced, ſeeing they have happened almoſt in every age for three hundred yeares ſpace, of which ſome certaine doe enſue.

Barony of Grooby.

Barony of Grooby in com. Leyceſt.

WILLIELM. DE FERARIIS, com. Derbie obiit anno 38. HEN. III. — MARGARETA com. Derb. & domina de Grooby.

ROBERTUS DE FERARIIS comes de Derbie. — WILLIELM. DE FERARIIS dom. de Grooby, ex dono matris.

JOHANNES DE FERARIIS, dominus de Chartley. — WILLIELM. DE FERARIIS dominus de Grooby.

It appeareth by an office found after the death of WILLIAM DE FERARIIS, lord of Grooby, 23. HEN. VI. that MARGARET lady of Grooby, gave to WILLIAM DE FERARIIS her ſecond ſonne in taile the mannor of Grooby, by vertue whereof hee and his heirs were barons of Grooby.

Barony of Kelpecke.

The barony of Kelpecke com. Heref. temp. EDW. I.

ROBERTUS baro de Kelpecke.

ROBERTUS WALLERON baro de Kelpecke, obiit ſine prol. 1. EDW. I.

WILLIELMUS WALLERON.

ALIC. nupta PLAGENET.

1. ROBERTUS WALLERON, prox. hæres.

2. JOHANNES.

ALLANUS PLAGENET baro de Kelpecke.

ROBERTUS WALLERON, baron of Kelpecke, died 1 EDW. I. without heire of his body, and WILLIAM ſonne of ROBERT, brother of the ſaid ROBERT, was his next heire, yet he gave to ALLEN PLAGENET the lordſhip of Kelpecke, *&c.* in taile, by force whereof he was baron, and ſummoned to the parliament, and he died *anno* 27. EDW. I.

Barony of Blankeney.

The barony of Blankeney, in com. Lincoln.

JOHN DEYNCOURT.

Temp. EDW. II.

EDMUND DEYNCOURT baron of Blankney, obiit 20. EDW. II.

WILLIELM. DEYNCOURT baron of Blankney, intayled, obiit 38. EDW. III.

JOHN DEYNCOURT.

EDMOND DEYNCOURT.

ISABELL his next heire.

WILLIELMUS DEYNCOURT obiit ante patrem.

WILLIAM DEYNCOURT baron of Blankney.

Pat. anno 10. EDW. II. part. 2. num. 13.

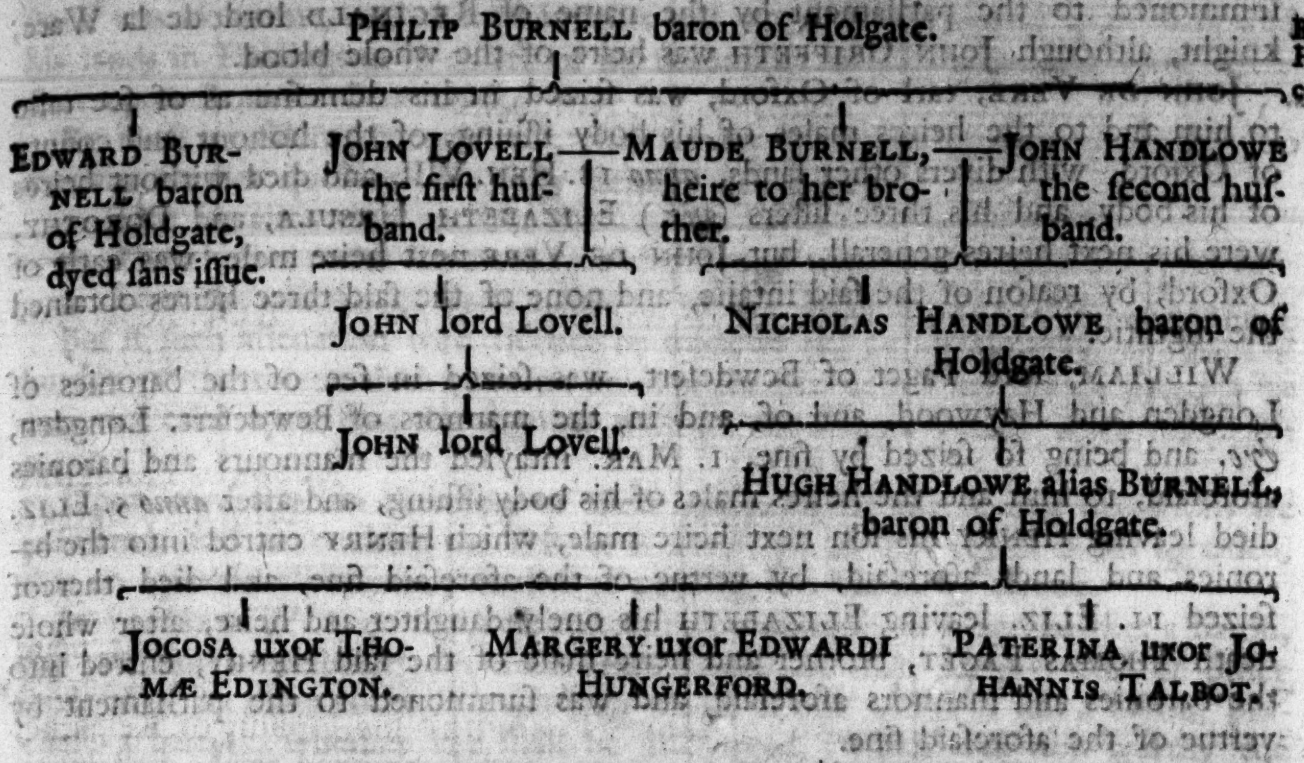
The King to all, *&c.* greeting; Know yee, that whereas lately our welbeloved EDMOND DEINCOURT conſidered, that both his ſirname, and alſo his armes after his death in the perſon of ISABEL DEINCOURT ſhould be quite blotted out of memory, moſt earneſtly deſired, *&c.* To whoſe requeſt in conſideration of ſervice to our father and our ſelfe by our letters patents do grant ſo much as in us lyeth to the ſaid EDMOND to diſpoſe to whom hee pleaſeth.

Eſch. 22. EDW. III. Sum. Parl. 7. EDW. III. clauſ. dorſ. part. 25.

By vertue whereof he gave them to WILLIAM, ſonne of JOHN DEINCOURT, all his lands, *&c.* in taile, the ſaid EDMOND died *ult.* EDW. II. *& tempore* EDW. III. WILLIAM was ſummoned to the parliament by vertue of that gift till his death, which was *anno* 38. EDW. III.

The

The barony of Holdgate, *com. Salop.*



It appeareth by divers offices in the time of EDW. III. that JOHN HANDLOWE in the right of MAUDE his wife, was ſeized of the mannor of Holgate, Acton, Burnell, *&c.* for life, the remainder to NICHOLAS HANDLOWE (alias) BURNELL, ſonne of the ſaid MAUDE and JOHN, by a fine in court, and that JOHN LOVELL was next heire of the ſaid MAUDE, and her firſt born ſonne by her firſt husband. And afterwards the ſaid NICHOLAS was ſummoned among the barons of this realme to the parliament by reaſon of the fine aforeſaid. And not the ſaid JOHN LOVELL that was next heire.

THOMAS DE BEAUCHAMPE, the elder earle of Warwicke, by a fine levyed 18. EDW. III. intayled the mannor and caſtle of Warwicke, with divers other poſſeſſions to himſelf for terme of his life, the remainder thereof to GUY his eldeſt ſonne, and to the heires males of his body iſſuing, and for want of ſuch heires, the remainder to come to THOMAS BEAUCHAMPE, brother to the aforeſaid GUY, and to the heires males of his body, *&c.* And after the ſaid GUY died without heires males of his body, leaving two daughters and heires living. Afterward the ſaid earle died, and the ſaid THOMAS, the ſonne, entered into the caſtle, and mannor aforeſaid with other the premiſſes and was earl of Warwick, by reaſon of the intaile aforeſaid, notwithſtanding that KATHERINE daughter of GUY next heire to the ſaid THOMAS the elder, was living thirty yeares after his death. Eſch. anno 43. EDW. III.

RICHARD earle of Arundell by a fine levied 21. EDW. III. intayled the caſtle, towne, *&c.* of Arundell to him and the heires males of the body of ELINOR his wife, by vertue whereof JOHN MALTRAVERS was earle of Arundell after the death of THOMAS the earle, who died without iſſue male, although his ſiſters poſſeſſed divers lands whereof he died ſeized in fee ſimple. Eſch. anno 9. HEN. V.

THOMAS the elder, lord Berkley, was ſeized in fee of the caſtle of Berkley and mannor, *&c.* And by a fine levied in 23. EDW. III. he intayled the ſaid caſtle, *&c.* to himſelf for life, the remainder to MAURICE his ſonne intailed with other remainders as before, which ſaid MAURICE had iſſue THOMAS lord Berkley and ſir JAMES, which ſir JAMES died in the life of his brother, leaving JAMES his ſonne and heire living: afterwards the ſaid THOMAS died 5. HEN. V. leaving ELIZABETH his daughter and heire married to RICHARD earle of Warwick, after whoſe death JAMES the nephew entered into the ſaid caſtle, *&c.* and was ſummoned to the parliament as lord Berkley, 9. HEN. V. Eſch. 5. HEN. V.

Eſch. 5. Hen. VI. THOMAS, lord de la Ware, died ſeized in taile by reaſon of a fine levied in the time of his anceſtors, of the baronie de la Ware with divers other lands in other counties, and died 5. HEN. VI. without iſſue; and REGINALD WEST, knight, of the halfe blood was next heire, by reaſon of the intaile, and was ſummoned to the parliament by the name of REGINALD lord de la Ware, knight, although JOHN GRIFFETH was heire of the whole blood.

Sum. Parliament. anno 7. Hen. VI.

Eſch. 9. Hen. VI. & 20. Hen. VI. JOHN DE VERE, earl of Oxford, was ſeized in his demeſne as of fee taile to him and to the heires males of his body iſſuing, of the honour and county of Oxford, with divers other lands, *anno* 18. HEN. VIII. and died without heires of his body, and his three ſiſters (*viz.*) ELIZABETH, URSULA, and DOROTHY, were his next heires generall, but JOHN DE VERE next heire male, was earle of Oxford, by reaſon of the ſaid intaile, and none of the ſaid three heires obtained the dignitie.

Eſch. anno 11. Eliz. WILLIAM, lord Paget of Bewdeſert, was ſeized in fee of the baronies of Longden and Haywood, and of, and in, the mannors of Bewdeſert, Longden, *&c.* and being ſo ſeized by fine, 1. MAR. intayled the mannours and baronies aforeſaid, to him and the heires males of his body iſſuing, and after *anno* 5. ELIZ. died leaving HENRY his ſon next heire male, which HENRY entred into the baronies and lands aforeſaid, by vertue of the aforeſaid fine, and died thereof ſeized 11. ELIZ. leaving ELIZABETH his onely daughter and heire, after whoſe death THOMAS PAGET, brother and heire male of the ſaid HENRY, entred into the baronies and mannors aforeſaid, and was ſummoned to the parliament by vertue of the aforeſaid fine.

Eſch. 6. Eliz. ROBERT LE OGLE intayled the mannors of Bothall and Ogle, with divers other mannors, *&c. com. Northumb.* to himſelfe for life, the remainder to the heires males of his body, and tooke to his firſt wife DOROTHY WITHERINGTON, by whom he had iſſue ROBERT his eldeſt ſonne, and MARGERY his daughter married GREGORY OGLE of Chippington, and the ſaid ROBERT, after the death of his firſt wife, married JOHAN RATCLIFFE, by whom he had iſſue CUTHBERT, his ſecond ſonne and died, after whoſe death ROBERT the ſonne was lord Ogle, and from him it went to CUTHBERT brother of the halfe blood, by vertue of the intaile, and not unto MARGARET nor CUTHBERT her ſonne of the whole blood.

Moreover thirdly, if a baron by tenure doth aliene by licence to a meere ſtranger upon conſideration, or, *&c.* if ſuch alienee be nobly deſcended, in ſuch caſes, after ſuch alienations, ſuch alienee hath borne the name and dignitie of a baron, in reſpect of ſuch barony ſo aliened; and if he had no dignity before, hee in reſpect of that hath beene ſummoned to the parliament, and enjoyed the barony, hereof are preſidents extant.

Eſch. 22. Rich. II. MAUDE, counteſſe of Angiers and Northumberland, heire of the barony of Cockermouth, after the death of LUCY her brother, who dyed without iſſue, intailed the honour, *&c.* of Cockermouth to her ſelfe, and to HENRY PIERCY earle of Northumberland, then her husband, and to the heires males of their bodyes, upon condition that they ſhould bear the armes of the ſaid earle, which are, *Or, a lyon rampant quartered,* with the armes of LUCIE, (*viz.*) *Gules* 3. *Lucies argent,* bearing the ſaid armes, ſo often as they ſhall appeare, and afterwards, *viz.* 22. RICH. II. died without iſſue.

Nevertheleſſe the ſaid earle, and after him the ſaid HENRY PIERCY his ſon were barons of the ſaid honour by the ſaid aſſurance, and ſir WILLIAM MELTON, knight, couzen and next heire of the ſaid counteſſe never had the ſaid armes.

Chart. patent. in 41. Hen. III. Amongſt the patents in the tower, *anno* 41. HEN. III. it appeareth that one HERWARD DE MARISCO, and RAMETA his wife, did grant unto SIMON DE MOUNTFORT, then earle of Leyceſter, the barony of Elinden in the county of Northampton, which deſcended to the ſaid RAMETA from JOHN DE VESCOUNT, which graunt ſeemeth to be with licence, for that the ſaid King doth by his patent confirme the ſame, and further gave to the ſaid earle, and his heires divers priviledges there.

Alſo, this antient charter following concerning the exchange of a barony with the King, is worth memory, which is, *temp.* king JOHN, *anno* 7. granted unto ROBERT DE NEWBERGH Fordington, for the honour of Burſtocke in exchange, and granted that it ſhould be the head, and the chiefe of the baronſhip, as Burſtock was aforetime, and that all knights and others ſhould attend upon him, and his lands in Fordington as chiefe of his baronſhip, as they aforetime were attendant upon ROBERT BURSTOCK.

By theſe preſidents it appeareth, that barony by tenure is *annexa feodo*. So that the former queſtions are fully ſatisfied and anſwered (*viz.*)

1. That by alienation without licence, the barony is forfeited.
2. That heires males have enjoyed them, and the females excluded.
3. That the alienee of ſuch a barony (nobly deſcended) is baron.

But if ſuch alienation with licence be made to any perſon ignoble, though the burden of the tenure doth remaine on him for the King's beſt advantage, yet he may not take upon him the dignitie without the King's ſpeciall favour upon his merit.

Upon conſideration therefore of theſe aſſertions all the former objections are anſwered, and as touching the firſt, it is anſwered by that which is laſt ſpecified, that an ignoble alienee may challenge nothing as a baron by tenure.

In 11. HEN. IV. 2, 6. in a caſe concerning a diſtreſſe, it is agreed that a baron, *&c.* are not contributary for ſuch lands parcell of their barony, but for other lands they are; but there is a queſtion made, if one which is not a baron, purchaſe a barony, whether hee ſhall be diſcharged, which was not worthy the queſtioning, if ſuch a purchaſer challenge by reaſon of his purchaſe, place in parliament; for as land holden by villein ſervice, doth not make the owner a villein which doth purchaſe the ſame, although by tenure he muſt doe villein ſervice; ſo land holden by baron ſervice doth not make the ignoble noble, though the charge of ſuch tenure lay upon him. Yet if the King will give to any man ignoble, in recompence of ſervice any caſtle, *&c.* to be holden *per baroniam*, hee is forthwith noble, becauſe hee draweth this nobilitie from the fountaine, without other creation.

But a queſtion by the way is neceſſary, what yeerely revenue is ſufficient for a baron.

Diverſitie of times hath brought forth divers determinations, as touching the French conſtitution, there is an old pamphlet wherein are theſe words; *Summon. debeant omnes comit. & barones, & eorum pares* (*viz.*) *qui habent terras & reddit. ad valentiam comitat. vel baron. integre, viz.* 20. *feod. milit. quolibet feod. comput. ad* 12. *libr. quæ faciunt libr. vel ad valent.* 13. *feod. milit. & 3. part. Unius feodi milit. quolibet feod. computand. ad* 20. *libr. quæ faciunt in toto* 400 *marcas, & nulli minores laici ſummon. debeant ad parliament. ratione tenur. niſi eorum præſentia aliis de cauſis fuerit neceſſe* (*cap. de laicis.*) Others have eſteemed it to be fourteen knights fees, but that doth reſt wholly in the pleaſure of the King to judge.

Modus tenend. parliament.

The revenue of a baron.

CAMBDEN in Britan.

To the ſecond, it is true that antient baronies which were holden *per baroniam*, are now in the hands of men ignoble, but the reaſon and means whereby ſuch mannors ſhould thus come to the hands of meaner perſonages are twofold; firſt, becauſe they have beene aliened by licence to them. Secondly, and which was uſuall, ſuch mannors have upon divers reaſons come to the crowne by way of reverſion, eſcheat or forfeiture, and after they were conveyed to others, reſerving other ſervices, ſo that it is no wonder that they be now holden in ſoccage, *&c.*

To the third objection, that antient barons have aliened, *&c.* and yet retaine the degree, I anſwer, that it is true, yet it proveth nothing againſt the former reſolution, therefore conſider that they be either originally barons by writ, or by tenure; by writ are of two kinds, for either in ſuch writ whereby they or their anceſtors were at firſt ſummoned, they were named only by their own names; or elſe addition was given them from the principal place of their abode,

Barony two ways.

abode, either from ſome diſtinction to ſever them from ſome honour of the ſame ſirname, or to give them ſuch honourable title by addition of the place which was not holden *per baroniam*; therefore if they aliene it away, they may yet retaine the title, becauſe it was not holden *per baroniam*, but was given by this writ of ſummons; thus much of barons by writ.

But if a baron by tenure, aliene to one ignoble by licence, and after the alienor be called by writ, he is not any more a baron by tenure, but by writ, and may retaine the name of a baron. Now of barons by writ.

Barons by writ.

A writ of ſummons.

A baron by writ is he to whom a writ of ſummons is directed by the King to come to the parliament to treat, *&c.* of the affairs of the realme, the forme of which is, Rex, &c. A. B. &c. de ſalut. Quia de aviſamento conſilii noſtri pro quibuſdam arduis & urgentibus nos ſtatum & defenſionem regni noſtri Angliæ & eccleſiæ Anglicanæ concernent, quoddam parliament. noſtrum apud, &c. die, &c. teneri ordinavimus, ac ibidem vobiſcum ac cum cæteris prælatis, magnatibus, & proceribus dicti regni noſtri colloquium habere & tractare, vobis in fide & legeantia veſtra quibus nobis tenemini, firmiter injungend. mandamus quod conſideratis dictorum negotiorum arduitate & periculis imminentibus ceſſante qnacunqne excuſatione dictis die & loco perſonaliter interſitis nobiſcum, ac cum prælatis, magnat. ac proceribus prædict. ſuper dict. negotiis tractatur, veſtrumque conſilium impenſari, & hoc ſicut nos & honorem noſtrum & ſalvationem & defenſionem regni & eccle. prædict. expeditio neque dictorum negotiorum diligitis nullatenus omittatis; which kind of writ is as well directed to barons by tenure and creation, as others, which are onely barons by writ, which thereupon are to enjoy the dignitie, becauſe thereby they be aſſociated in counſell with the King, *&c.*

Antiquity of barons by writ.

Touching their antiquitie and their firſt inſtitution I find little or no mention before HEN. III. his time, and therefore I conceive that either the firſt, or at leaſt the firſt frequent uſe of barons by writ was 49. HEN. III. in caſe of neceſſitie and upon lamentable occaſion of civill warre about the great charter, of which rebellion SIMON, then earle of Leyceſter, was ring-leader; and therefore, after divers battles fought at Northampton, Rocheſter, Lewes, &c. that which of all was the cataſtrophy of that tragedie was finiſhed at Eveſham, where the ſaid earle was ſlain and thoſe rebellious barons overthrown; whereupon preſently iſſued the parliament at Wincheſter, and after that at Weſtminſter, where the ſaid barons were to be attainted; wherefore foraſmuch as the number of the barons which had continued faithfull was ſmall, it was holden a neceſſarie policie to ſupply the number, *&c.* upon ſummons by writ, where were called all abbots, *&c.* which held not by barony, as others of the moſt worthy of the laytie, not holding by barony.

Divers manners of directions of ſummons.

Note further, theſe writs in form of either directions are divers, ſome directed by ſpecial name of a baron, as *Rex baroni de Stafford, de Greyſtock, de Dudley*, others by the name of the partie, with addition of the place, as, *Rex* JOHANNI DE STRAUNGE, *de Knocking, chevalier*, EDM. GRAY, *de Ruthen, chevalier*, EDW. GRAY, *de Grooby, &c.* Naming the chiefe caſtle, *&c.* of ſuch barony; ſome others are named in this manner with the title of lord, as, JOHANNI BEAUCHAMP *de Beauch. milit.* JOHANNI, *domino de Clinton*; HEN. PERCY, *domino de Poynings*; to others without additions, as, WILLIELMO DE LOVEL, *milit.* THO. DE SCALES, *milit.* WILLIELMO DEVEREUX, *milit.*

But the nature and qualitie of other barons by writ is aptly diſcovered by debate of a queſtion concerning the continuance and deſcent of a barony by writ, which I devide.

1. Firſt, Whether a barony by writ may deſcend?
2. Admit it may, then, Whether it will go to the heires females, there being no iſſue male?
3. Admit it doth, then, Whether the husband of ſuch heire female may aſſume the dignitie of a baron in *jure uxoris?*

Touching the first question, it shall be requisite for satisfaction of all men, to alleadge such principall reasons as are wont to be produced of both parts. Quest. 1.

Nobilitie and honour given in respect of wisdome, *&c.* which are gifts of GOD, and personall, cannot extend to others, for *privilegium personale personam sequitur & extinguitur cum persona*, but such is the dignitie of a baron by writ, therefore should not descend from the ancestor to the heir. Argument. ex parte negat.

Againe, if the calling to the parliament by writ be the efficient instrument of nobilitie in the ancestor, then the not calling the heire is a losse of that nobilitie. For admit some defects of nature in the heire, as leprosie, idiocy, frenzie, *&c.* he is made uncapable, and thereupon they conclude that it shall not descend. The second.

Of the contrary part the affirmative is proved thus, Honour given in respect of wisdome and virtue of him on whom it was first bestowed, is not onely a due reverence of him, *&c.* while he liveth, but also a memorable reward thereof to his posteritie; therefore this kind of honour is patrimoniall. Argument. ex parte affirm. CICERO pro Sextio.

If infamy of the ancestor be a blot to posteritie, for by it the law doth corrupt the blood for the offence of the ancestor, reason would, that the honour due to the ancestor, should be likewise honour to the posteritie; for contraries doe carrie their contrary in reason; for determination whereof it is to be noted that diversitie of reason hath bred diversitie of opinions.

Some thinke it is not descendable unlesse the heire be likewise called by writ, and that then it's an inheritance, but this is repugnant to the nature of a descent, which commonly carrieth the patrimony descendable (by act in law) upon the death of the ancestors (to the heire) or not at all, wherefore divers presidents prove that this doth descend, and there needs not any word of heire in the writ of summons, onely there is a speech of a speciall writ sometime directed to sir HENRY BROMFLET, when he was called to be lord Vescy by HEN. VI. in the 27th yeere of his raigne, wherein there are these words inserted, *Volumus tamen vos & hæredes vestros masculos de corpore vestro legitime exeuntes barones de Vescye.* Wherefore it is ever true that the heire of such a baron, when he is called to the parliament, that his descent of honour is thereby established and approved by the gracious judgment of our Soveraigne; so it is also true, that if it shall stand with her Highnesse's pleasure that such heire shall not be summoned at all (for none come to so high a councell except he be called) then that the nobilitie is much impaired and in a manner extinguished in the censure of all men, for that it had no other originall, but by writ of summons, for which, in the judgement of the supreme Soveraigne, he is secluded. And thus much as concerning the first article or point touching the descent in generall of this kind of barony. Teste Rege apud West. 24. Jun. 27. HEN. VI.

As for the second principall point, whether the barony by writ may descend to the heire male, it shall not be amisse likewise to view the reasons of each part, that by the conflict of argument the truth may the better be discerned. The second point.

Those which doe maintaine the affirmative part doe argue after this manner; that in reason, the sexe of the heire female ought no more to barre her of the dignitie then the nonage of the heire male ought to barre him; although during his nonage, hee be not able to doe the service; but as the service of the one is forbearing for the time, so the sexe of the other may at all times be supplyed by the maturitie and sufficiencie of her husband. Ratio 1. On the affirmative part.

Offices of honour which doe much import the publike weale being possessed by inheritance to descend to the heire female, if there bee no heire male, as the office of high constable of England, which descended unto the daughter of HUMPHREY DE BOHUN earle of Hereford and Essex, as afore declared; the office of lord steward, descended unto BLANCH daughter of HENRY earle of Lancaster, in whose right JOHN of Gaunt her husband enjoyed the same. The like may be said of the office of earle marshall, which descended by an heire female unto the house of Norfolke. All which offices are as unfit to be exercised by a woman, as it is unfit for a woman to bee summoned to the parliament, as a baron Ratio 2. KEILWAY, p. 170. 6. HEN. VIII.

baron by writ. And yet notwithſtanding the law doth allow the husband of ſuch a woman to exerciſe the office of the one; and therefore by the ſame congruitie of reaſon, ſuch husband is likewiſe by law inabled to performe the other.

Ratio 3. Many noble houſes in England doe ſupport, and lawfully beare the dignitie of baronage unto them deſcended by women, of the which many are by writ. Moreover, in France the dignitie to be a peere of the realme (as CHOPINUS by many examples proveth) deſcendeth to the heire female for want of heire male.

The dignitie of nobilitie deſcendeth likewiſe in Spaine unto the female, for want of heire male, which cuſtome not being only currant in our neighbouring countries, but alſo with us, is an evident proofe in the caſe in queſtion.

Ratio 1. On the negat. The adverſe part object that the writ of ſummons, *&c.* by which the baron hath his originall, is to call him to be one of the members of that right high aſſembly of parliament there to determine life and member, plea and right of land, *&c.* but theſe things are convenient onely for the qualitie of men, not to the other ſexe, *ergo*, it ought not to deſcend to the heire female.

Ratio 2. If it be anſwered, that ſuch heire female be unfit in her owne perſon, yet ſhe may marry one ſufficiently able to execute the ſame, this anſwer will neither ſatisfie nor ſalve the inconvenience; for admit ſhe were at age at the death of her anceſtors, unmarried, being in her owne choice, the great cauſes of the realme ſhould be ſubject to her will in the choice of her husband, which were inconvenient.

Ratio 3. Thirdly, if ſuch husband bee ſummoned, the writ ſhould make mention thereof, for otherwiſe it may be taken that he was choſen in his own perſon, and not in her right, but ſuch a ſummons wherein the wife is mentioned, was never ſeene, and if by a generall writ without mentioning his wife, he is thereby made baron in his own right.

Obſer. 1. Having heard the arguments on both ſides, place doth now require that we ſhould interpoſe opinion to compound this controverſie; this queſtion is ſomewhat perplexed by different preſidents, for ſome preſidents prove that baronies by writ have deſcended to heires females, whoſe husbands have been called to parliament, whether in their owne or wives right it matters not; but ſure it is, that ſuch marriage gave occaſion to the ſummons, and ſuch husbands and their poſterities beare the dignitie of their wives anceſtors, for by this controverſie wee purpoſe not to queſtion the right of ſuch noble houſes.

Obſer. 2. Barony of Cromwell. Secondly, wee muſt acknowledge that the Queene is to ſummon to the parliament whom ſhe pleaſe, and therefore, whereas RADULPH lord Cromwell being a baron by writ died having two coheires, ELIZABETH married to ſir THOMAS NEVILL, and JOAN, the younger, to ſir HUMPHREY BOURCHIER, the ſaid ſir HUMPHREY was called to the parliament as lord Cromwell, and not ſir THOMAS NEVILL, who had married the eldeſt ſiſter.

Obſer. 3. That if a baron by writ die, his daughter, ſiſter, or other collaterall heire female being his heire, and that no collaterall heire male can challenge the ſaid barony by any antient intayle or otherwiſe, ſuch claim by the heire female hath heretofore been allowed by the late right honourable commiſſioners in the office of the earle marſhall ſignified to the Queen, as upon the petition of the ſiſter and heire of GREGORY late lord Dacres deceaſed, may appeare; in whoſe pedigree it appeares, that THOMAS lord Dacres, had iſſue THOMAS his eldeſt ſonne, RALPH his ſecond, and HUMPHREY his third; THOMAS died in the life of his father, having iſſue JOAN his daughter and heire, married to ſir RICHARD FINES; afterwards THOMAS her grandfather died, whereupon HEN. VI. by patent 7. Novemb. *anno* 37. declares the ſaid RICHARD FINES to be lord Dacres, but *tempore* EDW. IV. the ſaid HUMPHREY DACRES after the attainder of the ſaid RALPH and himſelfe by parliament 1. EDW. IV. and after the death of the ſaid RALPH and reverſall of the ſaid act in 12. EDW. IV. challenged the ſaid baronie, whereupon after it was controverted in parliament, they ſubmitted themſelves to the arbitrement of EDW. IV. for performance whereof they entered into bond, whereupon

See the Barony of Dacres, ante page 24, 25, 26, &c.

the

the King awarded under the privy ſeale, 8 April, *anno* 13. that the ſaid RICHARD FINES ſhould be reputed lord Dacres, and that he and his heires of the body of the ſaid RICHARD ſhould retaine the ſaid place in parliament, which the ſaid THOMAS lord Dacres uſed, and that the heires of the body of the ſaid THOMAS ſhould enjoy the mannor of Holbeck. And that the ſaid HUMPHREY DACRES ſhould be reputed, named, and called the lord Dacres of Gilleſland, and that hee, *&c.* ſhould keepe the place in parliament next beneath the ſaid RICHARD FINES, *&c.* And that the heires of the ſaid THOMAS DACRES ſhould have the mannor of Fethington, *&c.* in taile. And ſo Gilleſland the antient barony remained to the heire male.

Award by king Edw. IV. ſee ante p. 25.

Obſerve alſo, that if any baron doe die without iſſue male, and that by ſome ſpeciall intaile, *&c.* by which an heire female enjoyeth the inheritance of the ſaid baron, ſuch heires females have beene called to the parliament, and not the husband or iſſue male of ſuch heire female, and this appeareth by a notable controverſie *tempore* HEN. VII. between ſir ROBERT WILLOUGHBY lord Brooke, and RICHARD NEVILL lord Latimer, for the barony of Latimer, which in effect was, The ſaid lord Brooke challenged the ſaid barony as coſen and heire of ELIZABETH his great grandmother, who was ſiſter and heire to JOHN NEVILL lord Latimer, who died without iſſue, and hereupon exhibited a petition to HEN. VII. in parliament, whereunto RICHARD then lord Latimer was called to anſwer, who agreed the deſcent (*viz.*) that the ſaid ELIZABETH was married unto ſir THOMAS WILLOUGHBY, ſecond ſonne to the lord WILLOUGHBY, but HEN. VI. becauſe the ſaid JOHN died without iſſue, and that the next heire was female, did therefore call to the parliament ſir GEORGE NEVILL, ſecond ſonne of RALPH earle of Weſtmerland to be lord Latimer, which GEORGE was grandfather of the ſaid RICHARD, namely father of HENRY, father to the ſaid RICHARD, in debate of which cauſe our queſtion, *viz.* Whether a barony by writ may deſcend unto heires females was debated, and in the end adjudged with the ſaid RICHARD, which preſidents doe afford us two judgements in the point, one *temp.* HEN. VI. when the writ was directed to the ſaid ſir GEO. NEVIL, and not ſir THO. WILLOUGHBY, husband of the ſaid ELIZ. and the 2d judgment was *temp.* HEN. VII. whereby the barony was adjudged unto RICH. lord Latimer, (deſcended from ſir GEO. NEVIL) againſt the lord Brooke, deſcended of the lineal heir general.

Obſer. 4.

Barony of Latimer. ſee ante p. 15.

But here the former preſident of the barony of Dacres, may be objected to incounter this concluſion: for whereas the heire female was married to ſir RICHARD FINES, by which he was baron of Dacres, and REYNOLPH and HUMPHREY the heires males placed below the ſaid heire female, by HEN. VI. and EDW. IV.

Object.

This objection is eaſily anſwered, for although HEN. VI. did declare him lord Dacres, yet REYN. being heire male bore alſo the title of lord Dacres, and by that name was attainted 1. EDW. IV.

Anſw.

Wherefore the reaſon why the heire male could not be regarded was the attainder, and when this was reverſed *temp.* EDW. IV. he to ſatisfie both competitors thus ordered it. And thus much concerning the ſecond point, whether a barony by writ may deſcend unto the heire female.

Ratio.

Concerning the third point admitting ſuch deſcent to the heire female, when no heire male can claime it, for then doth this queſtion take place, whether her husband ſhould enjoy that dignity in her right or no; ſomething hath beene ſaid hereof in the laſt queſtion, but for ſatisfaction wee are to inſiſt upon a reſolution in the very point *tempore* HEN. VIII. when maſter WIMBISH tooke upon him the ſtile of lord Talbois, *jure uxoris* having no iſſue by her, the King aſſiſted both by civill and temporall lawyers gave ſentence, that no huſband of a baroneſſe ſhould uſe her ſtile untill he had by her a child, whereby he ſhould be intitled by the curteſie to her inheritance.

Reſolution temp. HEN. VIII. Ante page 11.

The ſpeciall reaſons that occaſioned this ſentence were 2. firſt, the inconvenience that the husband ſhould be a peere of the realme to day, and to morrow by the death of his wife none, and ſo honour ſubject to mutation, without default of the partie.

Ratio 1.

Ratio 2. Secondly, if he had iſſue, if he ſhould not beare the ſtile, then ſhould his ſon after the death of his mother, dying in the life of his father, bee a baron without land, for it the father hath by the curteſie: but theſe queſtions take place where there is no heire male at all.

And thus much concerning the nature, qualitie, and eſtate of the baron by writ, and for reſolution of the ſeverall points and articles of the queſtion propoſed it may ſuffice; onely note the caſe in 13. EDW. III. where WILLIAM DE CLINTON having married the counteſſe of Huntington, they joyned in an aſſiſe of nuſance for levying a market, *&c.* Exception was taken becauſe he did not name himſelfe, but it was over-ruled, becauſe having it *jure uxoris*, by the law he may not uſe the ſame title, having no other title thereunto.

13. EDW. III. brieſe 259.

Now come we to barons by patent.

A baron by creation, is he or ſhe to whom the King hath conferred baronies by his letters patents.

The uſuall words are, *Conſiderantes itaque generis claritat. vel grata obſequia quæ* A. B. *mil. nobis præſtiterit, &c. Sciatis nos, &c. præfat.* A. B. *ad ſtatum, gradum, dignitat. & honor. baronis te ereximus præfecerimus & creavimus eidemque* A. B. *nomen, &c. baronis de* T. *impoſuimus, &c. Ac per patentes damus, &c. habend. præfat.* A. B. *& hær. &c.*

This kind of dignitie ſhall be of ſuch continuance, as ſhall be limited in the *habend.* ſometimes for life, ſometimes *pur auter vie*, as ſome held opinion in 32. HEN. VI. It may bee in the ſpeciall or in the generall. And this kind of patent was uſuall before the ſtatute, as it appeareth by the patent, whereby HUGH DE BURG was made earle of Kent, in the time of HEN. III. which was *Habend. ſibi & hæred. ſuis de corpore* MARGARETÆ *uxoris ſuæ ſororis* ALEXANDRI *regis Scotiæ procreat. & pro defectu talis exitus reman.* RIC. *hæred. dicti* HUGONIS, *&c.*

32. HEN. VI. 296.

Pat. 13. HEN. III. in turre, p. 2.

The manner of the ſolemnitie uſed in the creation of barons by patent, is much after this forme; the baron newly to be created, is preſented unto the Queen's Majeſtie ſitting in her chair of ſtate; after this order he is apparelled; in his ſurcote with the hood, a baron bearing the mantle before him, and two barons in their parliament robes on each hand, one leading him. The principal king at armes bearing the patent, and the officers at armes proceeding on before him; when they come in preſence of her Majeſtie, they make their ſolemne obeyſance three times; and the baron to be created kneeleth downe before the chaire of eſtate, the ſaid king at armes delivereth the patent of creation to the lord chamberlaine, who humbly preſents the ſame to her Majeſtie, who delivereth the ſame to the principall ſecretary to bee read, who reading the ſame with a loud voyce, at the word *creavimus*, the baron which carrieth the mantle preſenteth the ſame to her Majeſtie, who puts it on the new baron, whereby he is created, and then is the patent read out to the end, and delivered to the Queene, who delivereth it to the baron ſo created, who after moſt humble thankes given to her Majeſty riſeth up, and they depart in like ſolemne order as they came with the trumpets ſounding before them. The particular and more full knowledge of theſe ſolemnities I doe referre to the colledge and corporation of Heraulds, to whom the knowledge of theſe things doth moſt ſpecially appertaine.

For the better explanation of this kind of dignitie, the reſolution alſo of certaine queſtions ſhall bee very requiſite.

Queſt. 1. Firſt, if a nobleman and his progenitors have for a long time beene called to the parliament, and been a baron, either by tenure or by writ, and have had in regard thereof a place certaine in parliament, if afterwards the ſame nobleman ſhall be created a baron of that barony, and by the ſame name by letters patents, whether ſhall he and his heires retaine his old place in parliament, which he had according to the former dignitie, or whether ſhall he loſe his old place and take a new place, according to the time of his creation onely.

De la Ware, 11. rep. COOKE fol. 1. The caſe of the lord De la Ware received a reſolution ſomewhat anſwerable to this queſtion, The lord De la Ware, 3. EDW. VI. being in ſore diſpleaſure

with WILLIAM WEST his nephew and heire, who was father to THOMAS now lord De la Ware, procured an act of parliament, by which the ſaid WILLIAM WEST was, during his natural life onely, cleerely diſabled to claime, demand, or have any manner of right, title, or intereſt by deſcent, remainder, or otherwiſe in, or to the mannors, lands, tenements, or hereditaments, title or dignitie of THOMAS lord De la Ware his uncle; and after the ſaid THOMAS lord De la Ware died, and the ſaid WILLIAM WEST in the time of queen MARY was attainted of treaſon by verdict, and afterwards pardoned by queen MARY, and after by parliament in the time of the Queene's Majeſtie that now is, in the eighth yeare of her reign, was created lord De la Ware by patent, and had place in the parliament according to his creation, for that by the ſaid act of parliament in the time of EDW. VI. hee was excluded to challenge the former antient barony, and after died, whether the now lord De la Ware ſhould take his place according to the baron by writ, or according to his creation was the queſtion. The opinions of the Queen's councell being her Majeſtie's attorney generall, and ſolliciter, were, that the acceptance of the new creation by the ſaid WILLIAM WEST, could not extinguiſh the antient dignitie, for he had not that antient dignitie in him at the time of his creation, but that dignitie was at the time of his creation by the act of EDW. VI. in abbeyance, ſuſpence, or conſideration of law; and he thereby utterly diſinabled to have the ſame during his life onely, ſo as his acceptance could not extinguiſh that dignitie which he then had not, nor could conclude his heire, who was not diſabled by the ſaid act of 3. EDW. VI. to claime the antient barony; which opinion of theirs was ſoone allowed by the reſolutions of the lord chiefe juſtice of England and lord cheife baron, and ſo ſignified to the lord keeper. But this is to be noted by the reaſons made for the ſaid reſolution, that if the ſaid ſir WILLIAM WEST had beene baron, and intitled, or in poſſeſſion of the antient dignitie when he accepted the creation, the law perchance might have beene otherwiſe, but that remaineth as yet unreſolved. 2. & 3. PHIL. & MARY.

Secondly, it may be queſtioned whether a baron called by patent ought to be named by the name of his dignitie, in every writ to be ſued by him, or againſt him. Queſt. 2.

The bookes of law doe make difference herein betweene duke, marquiſſe, earle, viſcount, *&c.* which are allowed names of dignitie, and the baron, for they affirme that ſuch baron needeth not to be named lord or baron by his writ, but the duke, marqueſſe, earle or viſcount, ought to be named by their names or dignities; nevertheleſſe, I doe take theſe bookes to be underſtood of the barons by tenure, or barons by writ onely, for the title of a baron by patent in his letters patents under ſeale adorned, and named by the name of *ſtatus, gradus & dignitas*, and therefore is requiſite to be named, and ſuch dignities are a parcell of the name of the poſſeſſor, as well as the title and ſtile of duke, marqueſſe, earle, viſcount, *&c.* 8. HEN. VI. 10. 30. HEN. VIII. 30.

And although there may be conceived this difference laſt mentioned, betweene the baron by tenure or writ, and the baron by patent, yet they being all members of the higher houſe of parliament, they are thereby equally made noble, honourable, and peeres of the realme, as they are barons onely, without any other diſtinction that I have obſerved. And thus much concerning the three degrees of barons within this realme may ſuffice to be ſaid in generall upon this occaſion, for the better underſtanding and reſolution of the controverſie in hand.

There reſteth laſt of all that I ſhould expreſſe ſomething certaine of the ſundry priviledges that the lawes doe allow unto barons, and the nobilitie of the realme in generall, in regard of that favour, which all good policy in every well-governed common-wealth doth beſtow and yeeld to the noble and honourable; wherein I ſhall content my ſelfe only with certaine of thoſe priviledges which I find mentioned in the lawes of this realme, purpoſely omitting ſuch as either the civill, common, or the lawes of forraigne countries doe afford.

Firſt therefore, it is a priviledge that the peeres and nobilitie of the parliament doe enjoy, namely, to bee tried in the caſes of treaſon, felony, and ſuch like, by their peeres.

The

Mag. char. 29. 10. Edw. IV. 6. 20. Hen. VI. cap. 9. De conſuet. feudorum.

The antiquitie and originall of this kind of triall hath (as ſome men doe thinke) his ground from the ſtatute of *magna charta*, cap. 29. beginning that *nullus liber homo*, in theſe words, *Nec ſuper eum ibimus, nec ſuper eum mittimus niſi per legale judicium parium ſuorum.* But I take it to be more antient, as brought into this realme with the Conquerour, being anſwerable to the Norman and French lawes, and agreeable with the ſeverall cuſtomes, where almoſt all controverſies ariſing betweene the ſovereigne and his peeres are tried, *per judicium parium ſuorum.*

15. Edw. III. cap. VI. 1. Hen. IV. 1. 13. Hen. VIII. 11.

This triall in antient times was very oft had in parliament as may bee collected by the ſtatute of 15. Edw. III. *cap.* 6. But nevertheleſſe the ſame may as well be performed by commiſſion under the lord ſteward of *England*, the forme, manner, and ſolemnitie whereof is expreſſed in the bookes of law.

This priviledge hath ſome reſtraint, as well in regard of the perſon, as in the manner of proceedings. As touching the perſon.

1.

Firſt, the archbiſhops of this realme, although they be lords of the parliament, if they bee impeached of ſuch aſſent as aforeſaid, ſhall not be tried by the peeres of this realme, but by a jury of other ſubſtantiall perſons upon their oathes, the reaſon thereof (as I can conceive) as before remembred, namely for as much as the archbiſhops and biſhops cannot paſſe in the like caſes upon the tryall of any other of the peeres, for that they are prohibited by the eccleſiaſticall lawes to be judges of life and blood, reaſon would that the other peeres ſhould not trie them: for this triall ſhould be mutuall, foraſmuch as it is performed upon their honour without any oath taken.

27. Hen. VIII. Br. inqueſt. 100. triall 142. fine 2. Stamf. 153.

2.

Secondly, as touching the perſon, none but lords of the laytie, being lords of the parliament, ſhall have this kind of triall. And therefore hereout are excluded the eldeſt ſonne and heire apparent of a duke, in the life of his father, though he be called earle, and bear that title; likewiſe, the eldeſt ſonne and heire apparent of an earle, though he be onely a lord, or bear ſuch title.

38. Hen. VI. Br. Treaſon. 38. Hen. VIII. Caſe Leo. Gray en les con.

3.

Thoſe that are barons, and of the nobility of Ireland, if upon the like offence committed in England, if they chance to be apprehended in England, they ſhall not be tried herein by their peeres, for the lords of the parliament of England are not their peeres, but the lords of the parliament in Ireland.

19. & 20. Eliz. 366. See Prynn's argument in lord Mac-guire's caſe, in State tryals, vol. 8. in fol.

And thus much concerning the reſtraints of the ſaid priviledges in reſpect of the perſon.

As touching the manner of proceeding, the nobilitie of this realme doe enjoy the priviledge of triall by their peeres in courſe of inditement onely, which is a kind of proceeding *ex officio* between the Queen's Highneſs and them; but in any caſe of appeale of felony, which is in the ſuite of the ſubject, they ſhall not have the ſame, but ſhall be tried by a jury of twelve men upon their oathes. And thus much concerning this priviledge at this place, and upon this occaſion may ſuffice.

33. Hen. VIII. Br. jurors, 48. triall 142. 10. Edw. III. 6. Stam. 152.

Likewiſe this priviledge the nobility of this realme doe enjoy, that they are not to be impannelled in any jury or inqueſt, to make triall or inquiry upon their corporall oathes between partie and partie, and if they be impannelled contrary thereunto, they may have a writ out of the chancery repeating this priviledge directed to the juſtices, before whom ſuch noble perſonages are impannelled, commanding them to diſmiſſe him or them, that were ſo impannelled out of the ſaid pannell.

Privilegium ſecundum. 48. Edw. III. 30. 48. Aſſiſ. 6. 35. Hen. VI. 46. 22. Hen. VIII. 22. 22. Hen. VIII. 22. Regiſter 179. 15. Eliz. 315.

This priviledge hath reſtraint in two caſes, firſt, if he inquire concerning the King and commonwealth in any neceſſary and important decrees, as buſineſſe of this realme, then this priviledge is not allowed, nor taketh place. And therefore divers barons of the marches of Wales were impannelled before the biſhop of Ely, and other commiſſioners of Oyer and Terminer, to inquire of notable outrage committed by Gilbert de Clare, earle of Glouceſter, againſt Humphrey de Bohun, earle of Hereford and Eſſex, and his ſuites in Wales in the twentieth yeere of Edw. I. where John de Hastings, Edmund de Mortimer,

Reſtraint 1.

TIMER, THEOBALD DE VERDON, and other of the barons of the marches of Wales challenged their privileges aforesaid, and much insisted upon the same, but it was afterwards answered by the court, as by these words appeareth, *Eo quod res ista dominum Regem & coronam & dignitatem suas tangit deinde fuit ex parte domini Regis* JOHANNI HASTINGS, *& omnibus aliis magnat. supraneminat. quod pro statu & jure regni, & pro conservatione dignitatis coronæ, & pacis suæ opponant manum, ad librum, ad faciend. &c. quod eis ex parte domini Regis injungentur, &c.* The barons aforesaid nevertheless did persist in their challenge, and in the end both the said earle, betweene whom the said outrage had beene perpetrated, submitted themselves to the King's grace, and made their fines. 20. EDW. I. Rot. 14. Camera. Scac.

Secondly, this priviledge hath no place in case of necessitie, where the truth can no otherwise come to light, for the writ is, *Quia barones in assisis jurat. &c. poni non consuèrunt, ut dicunt nisi eorum sacrament. adeo sit necessarium quod sine illis veritas in qua non possit, tibi præcepimus, &c.* Restraint 2. Regist. 179.

In many cases the protestation of honour shall satisfie in noblemen, as in triall of their peeres, they proceed upon their honour, not upon their oath. And if a nobleman on an action of debt upon an accompt, in case where the plaintife is to be examined upon oath, upon the statute of 5. HEN. IV. cap. 8. it shall suffice to examine his attorney, and not himselfe, upon his oath. Privileg. 3. BRACT. lib. 5. cap. 9. fol. 352. 8. 3. 1. HEN. IV. 1. 13. HEN. VIII. 1. 5. HEN. VI. 48. COOKE 6. 53.

Yet if a nobleman will give evidence to a jury, reason would that he should bee sworne, for they are not bound to believe him upon such protestation, otherwise then they thinke in their conscience, to be conformable unto truth.

If a man doth receive a menace at the hand of a nobleman, whereupon he conceiveth fear of his safe-guard, and prayes a *supplicavit* in the Chancery, directed unto the justice of peace, or sheriffe to take bond, *&c.* upon such writ, which otherwise is ordinary, the lord chancellour shall award a *sub-pœna* instead thereof, and when he appeareth, instead of surety, he shall onely promise upon his honour to keepe the peace, which the law hath allowed in this point a caution sufficient. Privileg. 4. 35. HEN. VI. Sub-pœna 20. V. 14. EDW. III.

A nobleman is not to bee arrested by any *capias*, and therefore cannot be outlawed in any civill action, but onely in criminall. Privileg. 5. 21. EDW. III. 39. 43. EDW. III. 33.

And by the same reason lyeth no attachment against him, as it was ruled in parliament, 14. ELIZ. in the lord CROMWELL's case.

But if he make any notable contempt against the proceedings of the law, then ceaseth this priviledge, for *frustra legis auxilium invocat, qui in legem peccat.* As if on a writ *de homine replegiando*, he will not permit the sheriffe to execute the writ or *essoigne* the party, or upon a rescousse a *capias* hath this priviledge notwithstanding. 8 RICH. II. 7. HEN. IV. 2. 11. HEN. IV. 15. 1. HEN. V. 14. 14. HEN. VI. 2. 22. HEN. VI. 226. 26. HEN. VIII. 7.

So in cases criminall, a *capias* and an *exigent* may be awarded.

The like privileges doth the court of equitie allow in cases of conscience, for the lord chancellour doth not award any *sub-pœna*, but sendeth his letters missive in lieu of other ordinary processe. 14. ELIZ. 115. Restraint.

In the prosecution of any action personall, the plaintife may pray *jour de grace*, but against a peere of the realme, it shall not be allowed, although it be allowable against other persons. 27. HEN. VIII. 14. 15. HEN. VII. 1.

If any lord spirituall or temporall be partie to any action, there ought to be one knight at the least, to be impannelled in his jury, with other the most sufficientest esquires in the county, otherwise he may challenge the array, but if there bee no knight in the county, the pannell shall be made of the most sufficient *vavasours* and esquires there inhabiting. Chanc. nomine sub-pœna. Privileg. 6. 14. EDW. III. 24.

But if one bring an action against another, and the sheriffe impannell a jury, where there is not any knight, and before the triall the plaintife or defendant is created a baron, or earl, and hee doe challenge the said jury, such challenge shall not be allowed, for at the time of the enquest made, he was not so reputed, as in the case of REGINALD, late earle of Kent, may appeare. 15. EDW. III. 21. 22. EDW. III. 9. 27. EDW. 38. 41. EDW. III. 31. 27. HEN. VIII. 22.

If Privileg. 7.

13. EDW. III. Chal. 115. 8. 22. HEN. VIII. 22. DYER 107. 3. & 4. ELIZ. 24. 9. & 10. ELIZ. 26. 14. & 15. ELIZ. 318.

Privileg. 8. 6. Hen. VI. 2. If the King grant an annuitie or rent, to a then created baron, for the support of his degree, which they call creation money, this is ſo annexed to the dignitie, that by no manner of alienation it can be ſevered.

If the King upon ſuch creation give land, *&c.* untill he ſhall be advanced to ſome other living, and upon eviction to have the value, if he be impleaded of this land by *ſcire facias*, *&c.* hee ſhall have aid of the King. 21. Edw. III. 47.

Privileg. 9. Bract. l. 5. fol. 337. & 351. If a baron be partie to a ſuite, and would be eſſoigned, hee that caſts the eſſoigne out, to put in ſureties to prove the cauſe which is not uſuall in caſe of common perſons.

Privileg. 10. 16. Edw. III. 14. 38. Edw. III. 31. 1. Hen. VI. 7. 9. Hen. VI. 2. 32. Hen. VI. 30. In all caſes where he is to be amerced his amerciament is not leſſe than a hundred ſhillings by the ſtatute of *magna charta* and it was to be affirmed by his peeres. But for that it were troubleſome to aſſemble barons for ſo ſmall matter, ſuch amerciaments in time paſt have beene obtained by the barons of the exchequer, who were ſometimes barons of the realme.

Whereas by the ſtatute 32. Hen. VIII. no ſubject might keep in his family above four ſtrangers born, yet by a *proviſo* every baron may keep ſix.

19. Edw. III. 9. 21. Edw. IV. 77. Fleta. lib. 2. Privileg. 11. Br. fol. 256. Cooke 8. 39. Stat. 32. Hen. VIII. 16. If a lord of parliament having place and voyce there, be convicted of felony, wherein clergie is allowed, upon requeſt, alleadging that hee is a baron, *&c.* and clayming the benefit of his clergie, although hee cannot read; without burning in the hand, loſſe of inheritance, or corruption of blood, hee ſhall for the firſt time bee deemed a clerke convict, and may have purgation.

Alſo, whereas it is ordained that the juſtice of the peace named of the *quorum*, ſhall be reſident in his ſhire, by a *proviſo*, the peeres of the realme are exempted.

Privileg. 12. Stat. 1. Edw. VI. cap. 13. By the antient lawes before William the Conqueror's time, every man above twelve yeeres ſhould be ſworne to the King, which we obſerve now in the view of francke-pledge, court-leete. But noblemen, *&c.* are neither bound to attend the leete, nor take the oath.

Privileg. 13. Stat. 2. Hen. V. cap. 4. If an error be brought in parliament upon a judgement in the King's-bench, the upper houſe alone without the commons, are to examine the errors.

Lamb. perambul. de Kent. 21. In 11. Hen. VI. 2. in a caſe concerning diſtreſſe taken for expences and fees of the knights of the parliament, it was agreed that the barons are not contributorie for lands, parcell of the antient barony, but for other lands: but there is a queſtion made whether the purchaſer of ſuch an antient barony ſhould enjoy the ſaid priviledge, which queſtion was not worthy the queſtioning, for as lands holden by villaines ſervice doth not make the free purchaſer a villeine, though he be bound to doe ſuch villeine ſervice; ſo doth not ſuch purchaſe ennoble him that purchaſeth.

Britt. cap. 29. Marlb. cap. 10. Poſtnat. 20. 11. Hen. VI. 2. Stat. 5. Eliz. cap. 1. By the ſtatute of 5. Eliz. cap. 1. all burgeſſes of parliament ſhall take the oath of ſupremacie, ſo ſhall citizens and barons of cinque-ports; but there is a *proviſo* in that ſtatute, that foraſmuch as the Queen is otherwiſe ſufficiently aſſured of the faith, *&c.* of the temporall lawes; therefore this act ſhall not compell any of, or above, the degree of a baron to take this oath, nor to incurre any penalty limited for the refuſall.

By the ſtatute of 5. Rich. II. cap. 12. the King defendeth the paſſage of all manner of people in every port, *&c.* upon the ſea-coaſt, upon paine of forfeiture of all their goods, except lords, and other great men, and true and notable merchants, and the king's ſouldiers and all others ſhall forfeit, *&c.* But becauſe the ſtatute is abrogated by 4. Jacobi, cap. 2. I do not ſet this down for one of the priviledges at this day; but Philip earl of Arundell, ſon of Thomas duke of Norfolke, was taken upon the ſea paſſing into France about 30. Eliz. and was fined in the ſtarr-chamber, becauſe he took not ſhipping at one of the ports mentioned in that ſtatute.

In the priviledge before mentioned of his clergie, it ſhall be allowed him for breaking a houſe by day or night, for robbing upon the high-way, and in all other caſes (thoſe excepted in the ſtatute of 1. Edw. VI. 12.) ſaving in wilfull murder and poyſoning, but in all other caſes, wherein clergie is taken away, he

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is in the ſame degree with a common perſon, but the court will not give him the benefit of this ſtatute, if he requireth not the ſame. If a lord doth confeſs his offence upon arraignment, or abjure, or is outlawed for felony, in theſe caſes it ſeemeth he may have the benefit of this ſtatute, *viz.* his clergie, for that by the ſtatute of 18. ELIZ. cap. 18. hee nor any other need to make purgation, but ſhall bee forthwith delivered out of priſon by the juſtice. *Sed quere* BOLTON 202. by the imperial conſtitution, *Nobiles non torquentur in caſibus, in quibus plebei torquentur nec ſuſpenduntur, ſed decapitantur.* Which forme by favour of the Prince is allowed in England, yet THOMAS FINES, lord Dacres, of the ſouth, *tempore* HEN. VIII. and the lord STOURTON, *tempore* MAR. were hanged. Juriſd. Ba. 48.

By the ſtatute of 1. ELIZ. cap. 1. for uniformitie of common prayer, there is a *proviſo*, that the baron ſhall bee tried *per pares*, and not by any eccleſiaſticall courts, read the ſtatute at large.

At the common law it was lawfull for any to retaine as many chaplains as he would, but by the ſtatute of 21. HEN. VIII. 13. a reſtraint was made, *viz.* to every archbiſhop, and duke, ſix chaplains, with diſpenſation to keep two benefices with cure, to every marqueſſe or earle five, with the like priviledge; to the lord chancellour, every baron and knight of the Garter three, with the ſame priviledge. If a biſhop bee made an archbiſhop, or a baron an earle, yet can they have but chaplains as archbiſhop or earle, becauſe though there be divers dignities, yet the ſervice is to be done, but to one perſon; ſo if he be removed from his office, in this caſe he cannot be non-reſident without he procure a *non obſtante*.

So if a baron retain a chaplain, and before he is advanced, his lord is attainted, as the earl of Weſtmerland was, he cannot accept a ſecond benefice. COOKE rep. 4. 117. ACTON's caſe.

Thoſe that are firſt retained, ſhall onely have priviledge in caſe, *&c.*

By the ſtatute of 2. HEN. V. 8. that gives authoritie to the ſheriffe to raiſe *poſſe comitat.* Nevertheleſſe, may he not command the perſon of a nobleman to attend that ſervice, but if the ſheriffe upon a *ſupplicavit* againſt him, return that he is ſo puiſſant that he dare not arreſt him, the ſheriff ſhall be grievouſly amerced for ſuch return, for the writ is to all archbiſhops, biſhops, dukes, earles, *&c.* and to all liege men of the county to be ayding to him, therefore by intendment none will reſiſt the execution.

The words of *charta de foreſt. cap.* 11. are, every archbiſhop, biſhop, earle, or baron, coming to us at our commandment and paſſing by our forreſts may take one beaſt or two by the view of the forreſter if he be preſent, or elſe he ſhall cauſe one to blow an horne that he ſeeme not to ſteale our deare. In this ſtatute, though a duke, marqueſſe, or viſcount, being lord of the parliament being commanded, *&c.* ſhall have the ſame priviledge, ſo if the King ſend for him letters miſſive, meſſenger or ſergeant at armes, or by writ of *ſub-pœna*, to appear in chancery, they ſhall have the benefit of this ſtatute becauſe they came at the King's commandment, ſo in caſe of *ſcire facias* out of the Chancery or King's bench.

But if ſuch proceſſe goe out of the Common-pleas to appeare before the juſtices or the barons of the Exchequer he ſhall not have the benefit of the ſtatute, becauſe the ſtatute is *veniens ad nos*, and in thoſe courts they are, *quod coram nobis, &c.* So of the Starre-chamber. Alſo lords that come to viſit the new King, though not ſent for, ſhall have the priviledge: and ſo note this ſtatute is a warrant dormant and is to be underſtood of their returning homeward, MANWOOD, *cap.* 13. CROMPTON *juris*, D. 167. The ſtatute doth give licence to kill or hunt in the King's parkes, though the letter bee *tranſiens per forreſtam noſtram.* Alſo in certaine caſes the law doth give priviledge to the ſonns or brethren of noblemen, though they bee not of that degree, ſtat. 21. HEN. VIII. 13. & 7. EDW. VI. *cap.* 5.

Certain caſes wherein he has no priviledges.

IF the King commit a baron to priſon *durante bene placito*, he cannot be diſcharged by bayle or mainpriſe, or by the common writ *de homine replegiando*. And by the ſame power it is, if a noble perſon bee committed by the King's councell, for they are incorporated to his Highneſſe, and doe command, as with the King's mouth: and the ſame law is, if a nobleman be committed to priſon by the abſolute commandment of the King's judges, ſitting in their place of judicature, STAMF. *lib.* 2. *cap.* 18. *fol.* 72. as you have before, when the Prince himſelfe by the chiefe juſtice ſitting in the King's bench, and was not bayleable. Alſo a *capias* and an *exigent* may be awarded upon an indictment of a felony.

This ſtatute of præmunire, *cap.* 1. 16. RICH. II. upon which ſtatute an abbot which was lord of the parliament, being impleaded, did pray priviledge to appeare by attorney, *Et per curiam*, could not, for a *ceſſavit* lyeth againſt him.

Upon contempt of peeres a *capias* may bee awarded, 1. HEN. V. *ult.* 27. HEN. VIII. 22.

If he depart the realme as embaſſadour, *&c.* and returne not at the King's commandment, the King may ſeize his lands and goods, DYER 108. 176. The dutches of Suffolke's caſe; if he impriſon any man in his houſe, whereupon there is a writ *de homine replegiando*, if he convey him from the ſheriffe the court will award a *withernam* to arreſt, and impriſon him till he deliver the priſoner. 11. HEN. IV. 15.

All lords are compellable to take the oath mentioned in the ſtatute 3. JACOBI, and ſee the ſtatute of 7. JACOBI, who have authoritie to adminiſter it unto them. 3. JAC. cap. 4. 7. JAC. cap. 6.

Being arraigned of felony in an appeale, he ſhall not be tried by his peeres, as in caſe of inditement, in which caſe he may not challenge any of the triers, either peremptorily or upon cauſes, which is permitted to all other common perſons.

The judgment is the uſuall judgment given againſt common perſons, and though the King pardon all but the loſſe of his head, that is of ſpeciall grace, not *ex debito*.

By attainder the blood is corrupted and he and his poſterity made ignoble, and cannot be reſtored by the King's pardon, but onely by authoritie of parliament. STAMF. lib. 3. cap. 34.

And that nobility is not a thing ſubſtantiall, but meerly accidentall, preſent or abſent, without corruption of his ſubject, for experience ſhews that honourable titles are reſtrained by exorbitant crimes, when the nature in the mean while cannot be thruſt out with a forke, wherefore though we terme extinguiſhment of nobility in caſes of attainder, yet this phraſe is not uſed as though nobility were eſſentially in the humour of the blood, more than any other hereditary faculty; but becauſe the right of inheritance which deſcends by communication of blood, is by that meanes determined, and alſo in regard of the deteſtation of the crime, it is called corruption of blood, 16. ELIZ. DYER 332. The lord CHARLES HOWARD's caſe, if one be made a knight by a forraign King, he is ſo to be ſtiled in all legall proceedings in this realme, but if he be created by the Emperour an earle, it is otherwiſe, COKE's 7th rep. p. 16.

If the King create the ſon a duke, *&c.* and the father dies, he within age ſhall be in ward; but if he had been made a knight in his father's life, he ſhould not be in ward, neither for the lands deſcended, nor marriage, COKE's 6th rep. p. 74. DRURIE's caſe, though he be within age.

Nobilitie and lords in reputation onely.

THERE be other lords in reputation and appellation, who nevertheleſſe are not *de jure*, neither can they enjoy the priviledges of thoſe of the nobilitie of the parliament (*viz.*)

The

The ſonne and heire of a duke, during the life of his father, is onely by courteſie called an earle, and the eldeſt ſonne of an earle a baron, but not in legall proceedings, BROOK treaſon 2. But the King may create them in the life of their aunceſtors, lords of parliament. COOKE 8. 16.

A duke or others of the nobilitie of a forraigne nation being named duke in letters of ſafe conduct, that makes him not a duke to be ſued by that name in England, but a forraigne King ought ſo to be ſtiled, though he hath not *merum imperium* out of his owne kingdome, COKE 7. 15. *&c.*

All the younger ſonnes of the King of England are earles by birth without other creation, but onely lords by reputation.

A lord of Ireland or Scotland, though he be *poſt-natus*, is but onely lord in reputation.

Noble women.

ALTHOUGH noble women may not ſit in parliament in reſpect of their ſex, yet are they in law, peeres of the realme, and may challenge all, or moſt of the former priviledges.

But the opinions of ſome have been, that they cannot maintaine any action upon the ſtatute of 2. RICH. II. *cap.* 2. *de ſcand. magnat.* becauſe the ſtatute ſpeakes onely of other ſexes. CROMPT. juſt. de peace 85.

If any of the King's ſervants within the Check-roll conſpire the death of any noble woman, that is not felony within the ſtatute of 3. HEN. VII. 13.

Honourable women of three ſorts.

By creation, deſcent, marriage.

1. HEN. VIII. created ANNE BULLEN marchioneſſe of Pembroke, [and king JAMES created the lady COMPTON, wife to ſir THOMAS COMPTON, counteſſe of Buckingham, in the life of her ſaid husband without any addition of honour to him.

And lately by patent openly read in parliament without any other inveſture did the King create MARY, ſole daughter and heire of the late baron of Aburgavenny baroneſs de le Spenſer.] CAMDEN 63. 6.

2. Noble women by deſcent are thoſe to whom lands holden by ſuch dignitie doe deſcend, or whoſe anceſtors were ſeized of an eſtate deſcendable in their titles of dukedomes, *&c.* or thoſe whoſe anceſtors were ſummoned to parliament, by this an inheritance doth accrue to their poſteritie.

3. They who take to husband any peere of the realme, though they themſelves were not noble are peereſſes; FORTESCUE *de laudibus, fol.* 100.

Queſtion hath been made whether the dignitie of one ſummoned to the parliament dying without iſſue male may deſcend to the female, but this may appeare by the foregoing.

Concerning the title of honour deſcendable to the heire female, it is cleere that ſuch offices being of eſtate of inheritance doe deſcend, as the office of high conſtableſhip of England, challenged *tempore* HEN. VIII. by the duke of Buckingham, was adjudged to deſcend to the daughter of HUMPHREY BOHUN earle of Hereford. So the office of earle marſhall deſcended to the houſe of Norfolke, all which offices are as unfit to be exerciſed by their ſexes, as unfit for them to be ſummoned to the parliament.

And if ſuch title come in competition, the iſſue ſhall be tried by record, and certified by the King's writ, and not by jury, COKE 6. 53.

Though all daughters be coperceners, and make but one heire, yet in deſcent of dignities it is otherwiſe, for they be things entire, participating of ſuperioritie, therefore deſcendable onely to the eldeſt. And ſo is the civill law, yet there was a judgement *tempore* HEN. III. touching the deſcent of the earledome of Cheſter, Obiit 17. HEN. III.

the earle dying without iſſue, leaving his ſiſters his heires; the judgement was that it ſhould be divided equally among coperceners; but this judgement was held erroneous in that very age, *vid.* BRACT. *lib.* 2. *cap.* 34. *fol.* 76. *hoc fuit injuſtum, &c.* His reaſons are, becauſe the honour of chivalrie, chiefly conſiſting in the nobilitie may not be divided: for by the multitude of partitions, the reputation of honours in ſuch ſucceſſion muſt bee impaired, and the ſtrength of the realme being drawne into many hands by ſuch partition much infeebled. In which reſolution BRITTON by commandment, and in the name of EDW. I. accorded, *fol.* 187. The former judgment was given about 17. HEN. III. And the writers of that time teſtifie, that it came wholly to JOHN SCOT, ſon of DAVID earle of Huntington and Anguiſh, and MAUDE the eldeſt ſiſter of the ſaid RANDOLPH, if it were given upon the death of JOHN SCOT, who died without iſſue about 24. HEN. III. yet it ſtood in force, becauſe the King aſſumed the earledome to himſelfe upon other ſatisfaction to the coperceners, MAT. PAR. 366. *vide* MILLS 75. & GUILLEM.

MILLS 74,75. COKE 35. 7. part. 15. HUGH LUPUS the firſt earle of Cheſter, was by the Conquerour his uncle, created into that dignitie, *habend. ſibi, &c. adeo libere per gladium ſicut Rex ipſe tenuit Angliam per coronam, &c.* he died without iſſue, and the earldome divided among his four ſiſters. If ſhe be noble by birth, though ſhe marry under her degree, ſhe remaines noble, but thoſe innobled by marriage, and after marry with a man of meaner degree, utterly loſe her former dignitie, FORTESCUE 100. COKE 6. 53.

It was the caſe of RA. HOWARD, eſquire, husband of the widow of the lord Powis, againſt the dutches of Suffolke, the writ naming her ladie ANNE POWIS, DYER 79. ſo alſo in queen MARY's time, when the dutches of Suffolke married STOKES, *bre. Bro.* 146. digeſt. *lib.* 1. *tit.* 9. for the dignity accruing by marriage is but in fait and not by any record, COKE 6. 53. COKE 4. 117. COWELL's *inſtit. lib.* 1. *tit.* 10. 15.

So long ſhall a duke's wife be called dutches, and an earl's counteſſe, and enjoy all honours appertaining to that eſtate, with taſting, kneeling, ſerving, *&c.* And a baroneſſe and knight's wife, ſaluted lady, *Quamdiu matrimonium aut viduitas uxoris durant*, except ſhe elope, for as then every woman ſhall loſe her dower, ſo being advanced by titles of dignitie by that husband, by ſuch elopement loſeth them.

If a ladie which is married come through the forreſt, ſhe hath no priviledge by the ſtatute, but a dutcheſſe or counteſſe during the time ſhe is unmarried may, CROMPT. *juriſdict.* 167.

COKE 6. 52. Such ladies, whether they be married or ſole, upon indictment ſhall be tried *per peeres* by the ſtatute of 20. HEN. VI. *cap.* 9. it being a declaration of the common law.

By the civill law, *Si filia Regis nubat alicui domino, vel comit. dicetur tamen ſemper regalis.*

Among noble women there is difference of degrees, and according to their qualities the law gives ſpeciall priviledges, as followeth by the ſtatute of 25. EDW. III. 2. it is high treaſon to compaſſe or imagine the death of the Queen, or to violate the King's companion.

The King's ſpouſe is a ſole perſon in law to purchaſe, *&c.* plead and be impleaded, COKE 4. 117. THE. *lib.* 1. *cap.* 4. 24. EDW. III. 63. BRACT. 363. And of ſuch acts of parliament as concerne her, the judges ought to take notice, *Coment.* 231. alſo COKE 8. 28. In ſome caſes ſhe ſhall have prerorative as the King himſelfe. See the caſe of wardſhip 5. EDW. III. 4. STAMF. *prerog.*

The Queen, wife to the King, or widow, ſhall not be amerced if ſhe be nonſuited, whereas all other ſubjects ſhall, for ſhe ſhall participate with the King's prerogative, but not in all caſes, for the ſubject ſhall not ſue toher by petition as to the King, 11. HEN. IV. 67. STAMF. *prerog. cap.* 22.

Againſt the King, *nullum tempus occurrit*, otherwiſe of the Queene 18. EDW. III. 2. PHILIPPA *regina Angl. ibid. fol.* 1. *&* 13. STAMF. *prerog.* 18.

In 21. EDW. III. 6. A protection was allowed againſt the Queene.

In a writ of dower againſt ISABEL queen of England mother to the then King, the judges were of opinion that ſhe was not to anſwer to any writ, but ſaid they to the plaintife, it behoveth you to go to her by petition, to whom the demandant *dixit gratis*, and prayed the court for a continuance of the action untill ſhee might ſpeake with the Queene; but they nor the Queene's councell would agree, that the Queen ſhould be accepted as anſwerable 10. EDW. III. 379.

The wife of the King's eldeſt ſon hath ſome prerogative not communicable to the wives of other noblemen, for by the ſtatute of 25. EDW. III. it is high treaſon to violate her.

Dutcheſſes alſo and counteſſes have ſpeciall honour appertaining to the eſtates, as kneeling and taſting, which things I leave to the heraulds.

The ſtatute of 7. JAC. *cap.* 6. intituled an act for the adminiſtring the oath of allegiance and reformation of recuſant women; requireth thoſe of 18. yeares or above to take the ſaid oath.

Ladyes in reputation.

THE wife or widow of the ſonne and heire of a duke or earle, in the life of his father, is a lady by courteſie, and taketh place according to the antient time, as they have beene permitted by their ſoveraigne Prince, and allowance of the herauld. But in legall proceedings they are not to have ſuch priviledge.

If a noble woman of Spaine come into England by a ſafe conduct, *&c.* and ſo ſtiled in the ſaid letters, yet is ſhee but a lady in reputation.

An Engliſh woman borne taketh to husband a Spaniſh or French duke, though hee be made denizen, yet ſhall ſhe not beare the title of dignitie in legall proceedings.

A German woman is married to the marqueſſe of Northampton, or, *&c.* unleſſe ſhe be made denizen, ſhee cannot claime the priviledge or title of her husband, no more then ſhee can claime dower or joynture.

An Engliſh woman doth take the earle of Kildare in Ireland to her husband, or if a lord in Scotland, though hee be *poſt natus*, *&c.* their wives ſhall not participate their husbands dignities.

But if the King create one of his ſubjects naturalized by parliament to be viſcount Rocheſter within England, and after ſummon him to the parliament by writ, and aſſigne him place there, by this he is made a peere of the realme, and partakes with them of all priviledges, and by conſequence his wife, widow, and children after him, 34. EDW. III. 35. GILBERT HUMFREVIL's caſe. Earl of Angus in Scotland.

But if an Engliſhman be made by the Emperour earle of the empire, his wife ſhall not beare that title, either according to law or reputation.

All daughters of dukes, marqueſſes and earles, are (by cuſtome long uſed in the King's palace) to be named ladies, and to have precedencie according to the degrees of their parents, and of this cuſtome the law taketh notice.

But nevertheleſſe in the King's courts of juſtice, they bear not this title of honour, no more then the ſons of ſuch noble perſonages, brothers to ſuch ladyes may doe.

The hypotheſis, or particular Queſtion.

WHETHER the dignitie of Aburgavenny, *ſit conjuncta feodo*, and ſuch as ought to deſcend to the ſpeciall heire male, ſeiſed of the caſtle, bearing the head of that barony, and of the lands that make that honour.

Or

Or whether the dignitie, name and ſtile, to be baron of Aburgavenny, ought to deſcend to the generall heire who is not intereſted in the ſaid caſtle or honour.

For the more orderly proceeding herein to avoid confuſion, and that every thing appeare concerning this queſtion in its proper perſon; there ſhall be ſhewed,

1. Firſt, that the barony is a barony by tenure, a very antient honour, and not a barony by writ onely, whereof will enſue by the former declaration in this treatiſe; that the dignitie and name *de jure* ought to go and deſcend with the caſtle and honour ſo holden, as long as the ſame ſhall or may continue in the name, blood, and line, of ſuch as are nobly deſcended, and may ſupport the ſame. There ſhall be proved,

2. Secondly, That the ſaid barony of Aburgavenny, and the name, title, and dignitie of lord, and barony of Aburgavenny *de facto* hath come and deſcended with the caſtle, which make the honour by the ſpace of 300 yeeres laſt paſt, in their noble families in the blood of the HASTINGS.

In the time of BEAUCHAMPE, and the time of NEVILL, where the name by the grace of GOD doth now, and long may continue, every which family having right to the ſaid caſtle and honour, did lawfully beare the name and title of lord Aburgavenny, and had place in parliament accordingly. And therein ſhall be anſwered the objections made to the contrary.

That the barony of Aburgavenny is a barony by tenure, and an antient honour.

AFTER the Normans had conquered this land, it was carefully obſerved by them as a matter of much moment, and a point of ſpecial policie to place upon the confines or borders of the Brittaines or Welch, not then ſubdued, men of much matter, not onely ſufficiently able to encounter the inrodes and invaſions of the enemie, but alſo willing to make onſets on them, and to enlarge the conqueſt. Theſe men thus placed were of high blood, credit, and continuance among them, countreymen to the Normans, and in whoſe faith and prowes the Conquerors repoſed ſpeciall confidence and truſt. And therefore in the territories given unto them to hold, the tenures were deviſed to be very ſpeciall and of great importance, and their honours inriched with many priviledges, the earle of Cheſter for the north border of Wales erected a county palatine; and the barons of the middle part of the ſouth marches were adorned in a manner with a palatine juriſdiction, having a court of chancery, and writs onely among themſelves pleadable, to the intent that their attendance might not thence be driven, for the proſecuting of controverſies or quarrels in the law. And as for the other part of the ſouth marches, they ſeemed ſufficiently fenced with the river of Severne and the ſea.

7. HEN. VI. 35. 18. EDW. II. Aſſiſis 182. fol.

The caſtle of Aburgavenny taketh its name from the river of Gevenny, whereon it is ſcituate, and the Britiſh word *abber*, which ſignifieth a mouth, and is interpreted the mouth of Gevenny, becauſe the caſtle and mouth of Aburgavenny is built neere the place where the ſaid river of Gevenny doth open it ſelfe to the end of the Uske; it is an antient fortreſſe of old foundation: there, or neere unto the place (as learned men doe probably, and upon many good circumſtances conjecture) where the Romans builded their *Gabonium*. It is the chiefeſt towne of the county, called the higher *Guent*, by the Romans called *ventum Gallinum*, now parcell of the county of Monmouth.

This caſtle, *&c.* was firſt given to be holden *per baroniam ſive grand ſerjantie*, the ſervice whereof is of great importance, as appeareth by this record following.

Ex bundello Eſch. 6. EDW. II. Mar. Wal.

Inquiſitio capt. &c. At Aburgavenny, 6. EDW. II. upon the death of JOHN HASTINGS found quod idem JOHANNES tenuit caſtrum, &c. De Rege in capite per ſervicium homagii wardi maritag. cum acciderit, & ſi fuerit inter regem Angl. & principem Walliæ dictus JOHANNES debet cuſtodire patriam de Operwent ſumptibus propriis.

Inquiſitio

Inquiſitio capt. apud Hereford upon a writ of ad quod damnum, found quod non eſt ad damnum Regis nec, &c. ſi Rex concedat priori, &c. de Aburg. quod ipſe duas acr. prat. vocat. Weldelham, &c. quas de LORENTIO DE HASTINGS nuper comit. Pembroke poſt ſtatutum de mortmaine retinere poſſit ſibi & ſucceſſoribus ſuis, & dicunt quod præd. 2. acr. fuerunt de dominicis prædicti comit. & tenentur immediate de Rege ut parcella caſtri quod tenetur de eo, & de nullo alio. Ex bundell. eſch. 25 EDW. III. Ex rot. patent. 4 EDW. I. num. 36.

Alſo, that this barony was of very large ſeignorie, and had petty barons holding thereof appeareth by writ, 1 EDW. I. for the more ſpeedy gathering of a fifteenth which was granted to him, towards his charge to the Holy Land, which writ is directed to the tenants of the ſaid barony, that they ſhould pay their part to GREMBALL PONEEFOTE and HENRY DE BRAY appointed collectours, directed in this manner.

Rex abbatibus, prior. baron. mil. liberis hominibus & omnibus aliis tenentibus de honor. Aberg. ſalut. Cum archiepiſcopi, epiſcopi, abbat. prior. mil. & omnes alii de regno 15th de bonis ſuis, quibuſdam tamen rebus exceptis nobis liberaliter conceſſerunt & benigne ad exonerationem debitorum in quibus diverſis mercatoribus de tempore quo moram in terra ſancta geſſimus obligamur, nos, &c.

Obſervatio ſecunda, That the title of Abergavenny *de facto* hath deſcended with the caſtle, *&c.*

WILLIAM the Conquerour gave the county of higher Guent, unto HAMLINE DE BALUNE, the ſonne of DRUGO DE BALUNE, a Norman, which builded the caſtle and priory of Abergavenny, and after aſſured the ſame to BRIAN DE WALLINGFORD, ſonne of EUDO earle of Brittaine, ſonne of LUCIE younger ſiſter of the ſaid HAMLINE, by whom it was conveyed to WALTER, ſecond ſonne of MILES of Glouceſter, earle of Hereford, from him it came to his brother HENRY, and thence to the family of BREWES barons in the marches of Wales, and from them to CANTELUPE, barons in the ſaid marches. WALT. of Glou. BREWES. CANTELUPE.

The line of HASTINGS, owners of this caſtle, and in reſpect thereof intituled, barons of Aburgavenny.

GEORGE DE CANTELUPE baron of Aburgavenny and Cantelupe, the laſt of that name died without iſſue, having two ſiſters, JOAN the eldeſt married to HENRY HASTINGS, and MILLISCENT married to EUDO LA ZOUCH. HENRY HASTINGS by his wife had iſſue JOHN, and becauſe he did adhere to the barons *tempore* HEN. III. he was impriſoned for ſeven yeeres, during which time hee died. And that barony being in the King's hands, he gave it to PETER DE SABAUDIA in exchange for the mannor of Bayden-hall parcell of the honour of Richmond which the ſaid King had given him; ſo that this barony came now to the earle of Richmond, as by an office found after the death of JOHN BRITTON earle of Richmond, *tempore* EDW. III. appeareth. HASTINGS. ED. KELENI Article 35. Rot. cart. HEN. III. Eſc. 8 EDW. I. In Suſſex. Ex rot. clauſ. 2 EDW. I. indorſ. memb. 12.

The ſaid JOHN HASTINGS at the time of the death of HENRY his father, and JOAN his mother, both which died in the life of the ſaid GEORGE CANTELUPE, as alſo at the time of the death of the ſaid GEORGE his uncle, was within age, and in ward to EDW. I. during whoſe minority, there was a partition betweene the ſaid MILLISCENT his aunt, and the ſaid JOHN, by which the caſtle, *&c.* of Abergavenny then extended to the yeerely value of two hundred pounds, eighteene ſhillings and three pence, as alſo Kill Garren, St. Cleere, and other lands in England and Wales. And unto the ſaid MILLISCENT were allotted the caſtle of Totnes in Devon, *&c.* Eyton in the county of Bedford, and Farringworth, *&c.* with divers other lands.

The ſaid JOHN came to full age, 11 EDW. I. and did his homage, and had his livery as appeareth by record, but by the ſame record appeareth, that the barony of Haſtings was never redeemed according to the edict de Kellenworth, but granted to PETER DE SABAUDIA, as aforeſaid. The firſt JOHN HASTINGS, baron of Aberg.

This JOHN did lawfully beare the title of lord Abergavenny, by this partition.

The ſaid JOHN being one of the competitors for the crowne of Scotland, with the reſt ſubmitted himſelfe 19 EDW. I. to the determination of the ſaid King as ſupreme lord of Scotland, which commiſſion was framed in theſe words:

In magno rot. ſcac.

A tout crus, &c. FLORENCE comit. de Holland, ROBERT DE BRUSE ſeigneur de Vaſdanm. JO. BALIOL ſeigneur de Badenaw, PATRICK DE DUMBAR comite de la March, JA. DE VASCYE pur ſon pier NICH. DE SEULES, GULIELM. DE ROSSE, ſalus en Dieu. Cum nous entendomus daver droit en roylme de Eſcoce, & cel duel jure chalenger & avouer devant ceo que pluis de pouer, juriſdiction & reaſon eiſt de trier noſtre droit. Et le noble prince ſeig. EDWARD, nous ſyant enforme per bo. & ſufficient reaſon que a luy come aver droit ſoveraigne Seigneur ſ̃e du dit roylme de Eſcoce, & la conuſance d'oyer trier & determin. noſtre droit, nous ne noſtre volunt ſans nul maner de force ou diſtreſſe de droit devant luy come ſoveraigne Seigneur de la terre, &c. l'an de grace, 1291.

There was another like writing, whereby theſe competitors doe yeeld ſome of the kingdome of Scotland unto the ſaid EDW. I. untill he ſhould determine the controverſie.

Afterwards the ſentence was given by EDW. I. for JOHN BALIOLL, who afterwards adhered to the French againſt England.

Whereupon EDW. I. proſecuting war againſt Scotland, the Pope intermedling, a parliament was proclaimed to be held at Lincolne 29 EDW. I. where it was agreed that the King ſhould write to the Pope touching his right to that crowne, and the wrong offered him; and that the nobility ſhould write, that they neither could, nor ought to ſuffer: that the king of England ſhould referre the ſame to the Pope's ſentence, they ſubſcribing their names and titles of honour, among which was the ſaid JOHN HASTINGS's name in this manner, JOHANNES *dominus de Aburgavenny*.

Ex rot. Wal. 17 EDW. I. in dorſo.

In 16 EDW. I. the king purpoſing to go to France, charged the lords marchers of Wales to be reſident upon their baronies, fearing the invaſion of the Welch. And *anno* 17. in the rebellion of RISE AP MEREDOCKE the King being in France, directeth his writ unto the ſaid marchers under the *teſt.* EDMUNDI *fratris ſui.* And among other the barons there named, as EDWARD DE MORTIMER, ROGER MORTIMER, PET. CORBET, ROGER LE STRANGE, FULK FITZWARREN, GALFRID DE CANMYL, WILLIAM MORTIMER, GUY DE BRIAN, JOHN DE HASTINGS, RA. DE TOUY, WILLIAM DE BRUSE, JOHN TREGOUSE, BOGOK NEVILL, RIC. FITZ-ALLEN, & JO. FITZ-REGINALD, and all barons marchers.

20 EDW. I. 14. in recept. ſcaccar.

Againe 20 EDW. I. when there was a great quarrell between GILBERT DE CLARE earle of Glouceſter and Hereford and HUMFREY DE BOHUN late earle of Hereford and Eſſex, whereupon murders, *&c.* had beene committed in their lands in Brecnoke.

A commiſſion was awarded to the biſhop of Ely, WILLIAM DE VALENCE the King's uncle, JO. DE METTINGHAM one of the judges, and unto ROBERT DE HEREFORD, to heare and determine the ſame. In which commiſſion the ſaid JOHN HASTINGS was one. In which the commiſſioners would have had the ſaid barons to have beene ſworne to make preſentment thereof, which they refuſed, ſtanding upon their priviledge, and therefore the enqueſt was impannelled of others.

P. 23. EDW. I. The ſaid JOHN was ſummoned to the parliament, which was to be holden the ſunday next after the feaſt of St. MARTIN, as alſo to a parliament at Carlile, 35 EDW. I.

Object. 1. It will be objected that JOHN his father was ſummoned in 49 HEN. III. and therefore in regard thereof and not in reſpect of this barony, was this JOHN ſummoned.

Reſpon. It is true that HENRY HASTINGS was ſummoned in 49 HEN. III. he was captaine of the caſtle of Kellingworth, and held it againſt the King, and beheaded the King's meſſenger ſent unto him, for the which fact was the ſaid impriſonment before ſpoken of; and the barony of Haſtings deſcended not to the

ſaid JOHN. Therefore in the letters to the Pope, and in his claime to Scotland he writeth himſelfe JOHANNES HASTINGS, *&c.* and not *dominus* HASTINGS, which if that title had belonged to him he had expreſſed it. Ex. KENIL. act 34. Cron. Holenſ.

That he uſed the title of *dominus* Abergavenny, as *dominus proprietarius*, and not as *dominus honorarius*. Object. 2.

The ſame may be ſaid of the other competitor, and the letters to the Pope, which were ridiculous. Reſpon.

In the ſummons 23 EDW. I. he is named JO. HASTINGS, *mil.* and not JOHANNES *dominus* HASTINGS, therefore, *&c.* Object. 3.

They uſed not then to expreſſe the place except for diſtinction. Reſpon.

Now to the deſcent.

THIS JOHN died, 6 EDW. II. having iſſue JOHN, who died 18 EDW. II. and in the *diem elegit extremum*, he is ſtiled JOHANNES HASTINGS, *dominus de* Abergavenny and earle of Pembroke, *tempore* EDW. III. he died 12 EDW. III. having iſſue JOHN his heire, earle of Pembroke and lord of Abergavenny, who died 49 EDW. III. having iſſue JOHN earle of Pembroke, *&c.* who died by reaſon of a wound received at a juſt at Woodſtocke about 15 RICH. II. without iſſue, he was the laſt of that name baron of Abergavenny. Ex bundel. eſc. 18 EDW. II.

The family of BEAUCHAMPE lord Aburgavenny.

AFTER the death of the ſaid JOHN, REGINALD lord Gray of Ruthyn, ſonne of ELIZABETH ſiſter of the ſaid JOHN, the great grandfather of him that laſt died, claimed this barony, and thereof had livery. And thereupon grew a contention concerning the bearing of the armes of HASTINGS without difference betweene the lord GRAY of the whole blood, and ſir EDWARD HASTINGS of the halfe blood, which was adjudged for the lord GRAY in the earle marſhall's court. BEAUCHAMPE lord of Abergavenny.

A like contention was betweene the lord GRAY and WILLIAM BEAUCHAMPE, third ſonne of THOMAS the elder earle of Warwick, who claimed this barony againſt the ſaid lord GRAY by vertue of an intaile from the ſaid JOHN the elder, which proved, and upon compoſition the ſaid REGINALD, 15 RICH. II. levied a fine to, *&c.* whereby he acknowledged the right of the ſaid caſtle, to the uſe of the ſaid WILLIAM BEAUCHAMPE, as by an old MS. remaining with the earl of Kent may appear, as alſo by a partition of the ſaid lands. M. 15 RICH. II. & recordat. term. H. prox. Vid. the earle of Kent's booke.

Which ſir WILLIAM BEAUCHAMPE was created lord of Bergavenny by writ, *anno* 16 RICH. II. (ſee *ante* p. 82.) and was the ſeventeenth that bore the title of lord Bergavenny, and was father of RICHARD BEAUCHAMPE lord of Bergavenny, created earl of Worceſter, whoſe ſole daughter and heir ELIZABETH married ſir EDWARD NEVILL, younger ſon to the earl of Weſtmerland, who was lord Abergavenny by his wife; he had iſſue GEORGE NEVILL, lord Abergavenny, who had two ſons, 1. GEORGE NEVILL, lord Abergavenny, and 2. ſir EDWARD NEVILL, (of whom hereafter.) GEORGE NEVILL, lord Abergavenny, the eldeſt ſon, had iſſue HENRY, the laſt lord Abergavenny, who died Feb. 1586, leaving MARY his ſole daughter and heir, married to ſir THOMAS FANE of Kent, knt. whereupon the title devolved upon EDWARD NEVILL, ſon of ſir EDWARD NEVILL, knt. ſecond ſon of GEORGE NEVILL, lord Abergavenny beforementioned, by virtue of the entail.

HENRY, lord Bergavenny before mentioned, which dyed at his ſeat of Comfort near Berling in Kent, on the tenth of February 1586-7, leaving iſſue by FRANCES his wife, daughter of THOMAS MANNERS earl of Rutland, one ſole daughter and heir named MARY, who became the wife of ſir THOMAS FANE, knt. See the peerage of England, vol. 3. p. 112. oct. edit.

knt. challenged the title of baroneſs Bergavenny againſt EDWARD NEVIL, ſon of ſir EDWARD NEVIL, a younger brother to GEORGE lord Bergavenny, father to this laſt mentioned HENRY. On which ſir EDWARD the caſtle of Bergavenny was ſettled both by teſtament and act of parliament, but the diſpute was not determined untill 25 May, 1 JAC. I. when, after great arguments on each part, the title of lord Bergavenny was both by judgment of the houſe of peers and order of the lords commiſſioners for the office of earl marſhall of England, decreed for the HEIR MALE.

DUGDALE's baronage, vol. 1. p. 311.

Whereupon to give ſome ſatisfaction to the heir female, the King by his letters patents, granted the dignity or barony of le Deſpencer, to her and to her heirs, from whom the preſent earl of Weſtmoreland is deſcended. EDWARD NEVIL, eldeſt ſon of EDWARD, and grandſon of ſir EDWARD, in the firſt year of king JAMES I. had the title of lord Bergavenny confirmed to him by the houſe of peers.

The writ doth not make a peer, &c.

COKE's 12th report 81, 96, 108, 112. 1 Inſt. 16. 2 Salk. 509, 510.

And lord COKE in his 12th report page 70. recites the caſe thus: In the parliament a queſtion was made by the lord of Northampton, lord privy ſeal, in the upper houſe of parliament: That one EDWARD NEVIL, the father of EDWARD NEVIL, lord of Abergavenny, which now is, in the 2d and 3d of queen MARY was called by writ to parliament, and died before the parliament: If he was a baron or no and ſo ought to be named, was the queſtion. And it was reſolved by the lord chancellor, the two chief juſtices, chief baron, and divers other juſtices there preſent, that the direction and delivery of the writ did not make him a baron or noble, until he did come to the parliament, and there ſit, according to the commandment of the writ; for until that, the writ did not take its effect, and the words of the writ were well penned, which are, Rex & Regina, &c. EDWARDO NEVIL de Abergavenny, chivalier. Quia de adviſamento & aſſenſu concilii noſtri pro quibuſdam arduis & urgentibus negotiis ſtatum & defenſionem regni noſtri Angliæ concernentibus, quoddam parliamentum noſtrum apud Weſtmonaſterium, 21 die Octobris proximo futuro teneri ordinavimus, & ibidem vobiſcum, ac cum prelatis, magnatibus & proceribus dicti regni noſtri colloquium habere & tractatum: Vobis in fide & ligeantia, quibus nobis tenemini, firmiter jungendo mandamus, quod conſideratis dictorum negotiorum arduitate & periculis imminentibus, ceſſante excuſatione quacunque, dictis die & loco perſonaliter interſitis nobiſcum, ac cum prelatis, magnatibus ac proceribus ſupradictis, ſuper dictis negotiis tractaturis, veſtrumque conſilium impenſur. & hoc ſicut nobis, &c. And in the 35 HEN. VI. 46. and other books, he is called a peer of parliament, the which he cannot be until he ſit in parliament, and he cannot be of the parliament until the parliament begin; and foraſmuch as he hath been made a peer of parliament by writ, by which implicitly he is a baron, the writ hath not its operation and effect, until he ſit in parliament, there to conſult with the King and the other nobles of the realm; which command of the King by his *ſuperſedeas* may be countermanded, or the ſaid EDWARD NEVIL might have excuſed himſelf to the King, or he might have waved it, and ſubmitted himſelf to his fine; as one who is diſtrained to be a knight, or one learned in the law is called to be a ſerjeant, the writ cannot make him a knight, or a ſerjeant: And when one is called by writ to parliament the order is, that he be apparelled in his parliament-robes, and his writ is openly read in the upper houſe, and he is brought into his place by two lords of parliament, and then he is adjudged in law, *inter pares regni*, that is to ſay, Ut cum olim ſenatores e cenſu eligebantur, ſic barones apud nos habiti fuerint, qui per integram baroniam terras ſuas tenebant, ſive 13 feodo militum, & tertiam partem unius feodi militis, quolibet feodo computato ad 20 *l.* quæ faciunt 400 marcas denarii erat valentia unius baroniæ integræ, & qui terras & redditus ad hanc valentiam habuerint, ad parliamentum ſummoniri ſolebant; ſo that by this it appears, that every one who hath an intire barony may have of right and of courſe a writ to be ſummoned to parliament, for without writ none can ſit in parliament: And with this agrees our books, for *una voce* they agree, that none

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can ſit in parliament as peer of the realm; without matter of record, and if iſſue be taken, whether a baron or no baron, earl or no earl, this ſhall not be tried *per pais*, but by the record, by which it appears, that he was a peer of parliament; for without matter of record he cannot be a peer of parliament, 35 HEN. VI. 46. 48 EDW. III. 30. *b.* 48 Aſſ. pl. 6. 22 Aſſ. pl. 24. Regiſter 287. HENRICUS III. poſt magnas perturbationes & enormes exactiones inter ipſum Regem, SIMONEM DE MONTEFORTI, & alios barones motas & ſuſceptas ſtatuit & ordinavit, quod omnes illi comites & barones regni Angliæ, quibus ipſe Rex dignatus eſt brevia ſummonitionis dirigere, venirent ad parliamentum, & non alii niſi forte dominus Rex alia illa brevia eis dirigere voluiſſet: Which act or ſtatute continues in force to this day, ſo that now none, although that he hath an intire barony, can have a writ of ſummons to parliament without the King's warrant, under the privy ſeal at leaſt. COKE's 12th rep. 96.

But if the King creates any baron by letters patent under the great ſeal to him, and his heirs, or to him and to his heirs of his body, or for life, *&c.* there he is a nobleman preſently; for ſo he is expreſly created by letters patents of the King, which cannot be countermanded; and he ought to have a writ of ſummons to parliament of right and of courſe, and he ſhall be tryed by his peers, if he ſhall be arraigned before any parliament, but ſo ſhall not he be who is called by writ, until he ſits in parliament, which is the diverſity.

RICHARD II. created JOHN BEAUCHAMP of Holt, baron of Kiderminſter, by letters patent, dated 10 Oct. 11 year of his reign, where all others before him were created by writ. *Vide* COTTON 319. *he was ſummoned by writ. But 'tis ſaid he never ſate in parliament. And note, he was* DELAPOOL's *friend, and fell with him.*

The year after the ſaid EDWARD NEVIL claimed the title of earl of Weſtmorland, as heir male, which caſe is thus recited by my lord COKE, in his 7th rep. p. 33.

In this term, this caſe by the command of the King was propounded to all the judges, *anno* 21 RICH. II. RALPH NEVIL, lord of Raby, was by letters patents under the great ſeal created earl of Weſtmorland, to him, and the heirs males of his body; which RALPH, by MARGARET STAFFORD his firſt wife had iſſue, RALPH earl of Weſtmorland, to whom CHARLES late earl of Weſtmorland was lineal heir male of the body of the ſaid RALPH the firſt donee; and the ſaid RALPH the firſt donee, by JOAN, daughter of JOHN of Gaunt, duke of Lancaſter, had iſſue, GEORGE lord Latimer (for all his elder brothers were dead without iſſue male) from whom is lineally deſcended EDWARD NEVIL, who now is the neareſt iſſue male to the ſaid donee; and afterwards CHARLES earl of Weſtmorland was attainted by outlawry and by parliament of high treaſon, and died without iſſue male; and now the ſaid EDWARD NEVIL claimed to be earl of Weſtmorland. And in this caſe three queſtions were moved to all the judges of England. 1. If the ſaid limitation of the ſaid dignity to the ſaid RALPH, and the heirs males of his body be within the ſtatute *de donis conditionalibus*, or a fee-ſimple conditional at the common law. 2. Admitting that it was an eſtate-tail within the ſaid ſtatute, if by the attainder of treaſon the eſtate-tail was forfeited by a condition in law *tacite* annexed to the ſtate of the dignity. 3. If the eſtate of the dignity was forfeited by the act of 26 HEN. VIII. *cap.* 13. Or that the ſaid EDWARD NEVIL as heir male of the body of the firſt donee ought to be earl of Weſtmorland. And theſe points were argued and debated at ſerjeants-inn in Fleetſtreet by the King's attorney, and by the counſel of the ſaid EDWARD NEVIL. And as to the firſt it was objected, That the ſaid dignity was not within the ſtatute *de donis, &c.* for divers cauſes. 1. Becauſe it was a great dignity derived from the King, as the fountain of all dignity, and therefore it is not within the ſaid act, which ſpeaks only, *de tenement', quæ multotiens dantur ſub conditione, viz. cum aliquis terr' ſuam dat alicui viro, &c.* So this dignity cannot be included within this word tenements or land. 2. The ſtatute

Mich. 2. JACOBI. NEVIL's caſe.

Weſtm. cap. 1.

ſaith *in omnibus prædict. caſibus poſt prolem ſuſcitat. hujuſm' feoffati habuer. poteſtat. alienandi, &c.* But this dignity was adherent to the blood of the donee, and could not be aliened or granted, neither after nor before iſſue; and therefore ſuch caſes of dignities were out of the miſchief, the words and the intent of the makers of the act *de donis, &c.* And the opinion in MANXEL's caſe in the Common-pleas the grant of a thing which doth not concern land or tenements, nor (*a*) exerciſable in lands or tenements, as an (*b*) annuity which is perſonal, is not within the ſtatute *de donis, &c.* And it was ſaid this dignity was perſonal, and annexed to the blood of the donee, and by conſequence could not be entailed within the ſaid act. But it was reſolved by all the judges of England, that a name of (*c*) dignity might be intailed within the ſaid act: for in the caſe at bar it doth concern land, for he was made by the ſaid letters patents earl of Weſtmorland, who by the common law is the great conſervator of the peace, and ſheriffs are called *vicecom'* becauſe in antient times they were as deputies to earls, though now it is changed. And therefore, ſuch office of dignity of any place doth concern land, and therefore may be intailed within the ſaid ſtatute, as it is ſaid in *Pl. Com.* in MANXEL's caſe. The office of ſteward, (*d*) receiver, or bailiff of ſuch a manor may be intailed within the ſaid ſtatute, becauſe it is exerciſable within lands, 5 EDW. IV. The office of (*e*) marſhal of England was intailed, 1 HEN. VII. 28. *b.* An eſtate-tail may be of a foreſterſhip, 18 EDW. III. 27. The office of ſerjeancy or cuſtody of the (*g*) church of NICHOL' was intailed, 32 HEN. VI. 28. The earldom of Shrewsbury was intailed to J. TALBOT, knt. and the heirs males of his body. And I have ſeen a parliament writ in *anno* 27 HEN. VI. by which BROMFLET was ſummoned to parliament by the name of lord (*h*) Veſcy, with limitation in the writ to him and the heirs males of his body. And it is to be known, that as in antient time the ſenators of Rome were elected *a cenſu* of their revenues, ſo here in antient times in conferring of nobility, reſpect was had to their revenues, by which their dignity and nobility might be ſupported and maintained. And therefore a knight ought to have (*i*) 20 *l.* land *per ann.* a baron, 13 knights fees and a quarter, an earl 20 knights fees (for there was not any duke in England from the time of the conqueſt until 11 EDW. III. and the duke of Cornwall was the firſt duke after the conqueſt in England.) And that appears by the ſtatute of *magna charta, c.* 2. For always the fourth part of ſuch revenue, which is requiſite by the law to the dignity ſhall be paid to the King for (*k*) a relief; as the relief of a knight is 5 *l.* which is the fourth part of 20 *l.* which is a knight's revenue; and the relief of a baron is 100 marks, which is the fourth part of his revenue, *viz.* 400 marks, and includes thirteen knights fees and a quarter; and the relief of an earl is 100 *l.* which is the fourth part of 400 *l.* which is the revenue of an earl. And it appears by the records of the Exchequer, that the relief of a duke ſhall amount to (*l*) 200 *l.* and by conſequence his revenue ought to be 800 *l. per ann.* and that is the reaſon in our books, that every one of the nobility is preſumed in law to have (*m*) ſufficient freehold *ad ſuſtinend' nomen & onus. Vide* 3 HEN. VI. 48. 11 HEN. IV. 15. 14 HEN. VI. 2. See the counteſs of Rutland's caſe in the 6th part of my rep. *vide* CAMBD. *f.* 107. *Nec dum hæreditaria fuit hæc dignitas (ſc. comitis) verum cum* GULIELM' *Normanus, jam victor, ſummam rerum in hoc regno adminiſtraret, comites creati ſunt feudales, hæreditarii & patrimoniales, ut in antiquis cartis videre eſt, de tertio denario comitat', i. qui de placitis proven' in eod' comitatu.* And every baron and other of nobility is always created of ſome place; and now to what value the ſaid old rents in the time of HEN. III. & EDW. I. at this day do amount to, every one knows. And ſo it was clearly reſolved, that the dignity in the caſe in queſtion was within the ſtatute *de donis conditional'*; and with this reſolution agree divers precedents, and the experience and practice always uſed; for the earldom of Northumberland was intailed by queen MARY to T. PERCY, and the heirs males of his body; and for default of ſuch iſſue that H. his brother ſhould be earl, to him and the heirs males of his body: And in ſuch caſe by the attainder

(*a*) Co. lit. 20. a.
(*b*) Co. lit. 19. a. 20. a. 1 Rol. 837.
(*c*) 1 Rol. 837, 838. 12 Co. 81. Co. lit. 20. a.
(*d*) 1 Rol. 838.
(*e*) Co. lit. 20. a. 5 E. IV. 3. a.
(*f*) Co. lit. 20. a.
(*g*) Rol. 838. Co. lit. 20. a.
(*h*) Co. lit. 20. a.
(*i*) 9 Co. 124. b. Co. lit. 69. a. F. N. B. 28. c.
(*k*) 9 Co. 124. b. 2 Rol. 515. 516. Co. lit. 69. b. 83. b.
(*l*) 9 Co. 124. b.
(*m*) 6 Co. 52. b. Stile 222. Hob. 61. Moor 767.

tainder of T. of treaſon, H. was after his death earl of Northumberland by force of his rem'r, and his iſſue enjoy it at this day. So A. DUDLEY was by queen ELIZABETH created earl of Warwick, to him and the heirs males of his body, and for default of ſuch iſſue, that R. his brother ſhould be earl, to him and the heirs males of his body: And R. was created earl of L. in tail, with ſuch limitation to his brother A. and many other precedents are to the ſame effect. As to the ſecond point it was reſolved, that although this dignity be within the ſtatute *de donis conditional'*, yet by the attainder of (*n*) treaſon if the ſtatute of 26 HEN. VIII. had not been made, this dignity had been forfeited by force of a condition in law *tacite* annexed to the eſtate of the dignity: For thoſe who are earls have an office of great truſt and confidence, and are created to two purpoſes; (*o*) 1. *Ad conſulend' regi temp' pacis.* 2. *Ad defendend' regem & patr' temp' belli:* And therefore antiquity hath given them two enſigns to reſemble theſe two duties; for 1ſt, their head is adorned with a cap of honour and coronet, and their body with a robe in reſemblance of counſel. 2. They are girt with a ſword, in reſemblance that they ſhould be faithful and loyal to defend their Prince and country. And of both theſe BRACTON ſpeaks, lib. 1. cap. 8. (*p*) *Comites, viz. ſive a comitat' ſive a ſocietat' nomen ſumpſer', qui etiam dici poſſunt conſules a conſulendo; reges enim tales ſibi aſſociant, ad conſulendam & regend' populum Dei, ordinantes eos in magno honore & poteſtate, & nomine, quando accingunt gladiis, i. ringis gladior'.* By which appear theſe two ends, counſel and defence. Then when ſuch perſon againſt the duty and end of his dignity, takes not only counſel, but arms alſo againſt the King to deſtroy him, and therefore is attainted by due courſe of law, by that he hath forfeited his dignity by a condition *tacite* annexed to the eſtate of the dignity; in the ſame manner, as if tenant in tail of an (*q*) office of truſt miſuſe it, or uſe it not, theſe are forfeitures of ſuch offices for ever by force of a condition in law *tacite* annexed to their eſtates, as it is held in 11 EDW. IV. 1. 20 EDW. IV. 5, 6. 39 HEN. VI. 32. 22 Aſſ. 34. 8 HEN. IV. 18. 2 HEN. VII. 11. 14 HEN. VII. 1. Pl. com. 370. NEVIL's caſe. As to the third point it was reſolved by all the juſtices if that it had not been forfeited by the common law, that by the ſtatute of 26 HEN. VIII. *cap.* 13. the ſaid CHARLES had forfeited the dignity. For the words of the act are, Shall loſe and forfeit to the King's Highneſs, his heirs and ſucceſſors, all ſuch lands, tenements and hereditaments, which any ſuch offender ſhall have of any eſtate of inheritance in uſe or poſſeſſion, by any right, title, or means? And this dignity was an hereditament, and therein the ſaid CHARLES had an eſtate of inheritance. And where the ſtatute ſaith (in uſe or poſſeſſ.) that was to expreſs, that all manner of inheritances ſhould be forfeited for treaſon, and in their judgments all inheritances were either in uſe or in poſſeſſion, (for that act doth not extend to rights or titles) and it was neceſſary to add this word *uſe*, for by the common law an uſe, which was but a truſt and confidence, was not forfeited by attainder of treaſon. And when an uſe was expreſſed, then the addition of poſſeſſion was neceſſary, for otherwiſe nothing but uſes would be given to the King. And therefore it was reſolved, that an annuity of inheritance ſhall be forfeited by force of this act by attainder of treaſon, for that is an hereditament; and that was the firſt general act by which an eſtate-tail was forfeited to the King for treaſon. At the common law before the ſtatute *de donis conditionalib.*, if lands had been given to one, and the heirs males of his body, in that caſe as well the donor as the donee had a poſſibility, the donor of a reverter, if the donee died without iſſue male, and the donee to have power to alien, if he had iſſue male. For if the donee had iſſue a ſon, now to ſome intent the condition was performed, for *poſt prolem ſuſcitatam*, he had *poteſtatem alienandi*; and the reaſon thereof was, becauſe he having a fee-ſimple, and having iſſue, his iſſue could not avoid the alienation, becauſe he claimed fee-ſimple, whereof his father might bar him. And although the donee and his iſſue alſo after ſuch alienation died without iſſue, yet the donor, who had but a poſſibility or condition in law, and no reverſion or eſtate in him, could not recover

(*n*) 3 Inſt. 19. 1 JONES 76. LANE 46. GODB. 325. SAWY. argument in quo warranto 34.

(*o*) 12 Co. 95.

(*p*) 9 Co. 49. a.

(*q*) 2 Rol. 155.

2 Rol. rep. 314. LANE 46. GODB. 303. 4 inſt. 356.

Co. lit. 19. a.

the land againſt the alienee; for by the having of iſſue the condition was performed as to this intent, *ſcil.* to make an alienation. But in the ſame caſe at the common law; if the donee had iſſue a ſon and died, yet the ſon had not an
Co. lit. 19. a. abſolute fee-ſimple in him, but only the ſame power which his father had, *ſc.* to alien; and if ſuch iſſue died without iſſue, and without any alienation made, the land ſhould revert to the donor, as BRIAN held, 12 EDW. IV. 3. & 18 EDW.
1 Rol. 841. III. 46. by HUSE. For a collateral heir who is not heir of the body of the donee, is not within the form of the gift, the limitation being to the heirs males of the body of the donee, which limitation of heirs males of the body, doth exclude all collateral heirs to inherit: But the policy of the law was, to give power after iſſue to alien for two cauſes; one that the eſtate of a purchaſer ſhould not be avoided by a remote poſſibility, *ſc.* if the donee and his iſſue alſo ſhould die without iſſue: 2. If he having a fee-ſimple ſhould not have power after iſſue to alien, it would be in a manner a perpetuity, and a reſtraint of alienation for ever, which the common law for many cauſes will not ſuffer, and in 4 HEN. III. *formedon.* 64. is is adjudged, that where lands were given in frank-marriage, and the donees had iſſue and died, and afterwards the iſſue died without iſſue; that his collateral heir ſhould not inherit; for the donor recovered the land in a *formed.* in the *reverter*; and in the ſaid caſe if the donee had iſſue two ſons, and died, and the elder ſon had iſſue a daughter, and died without iſſue male, the youngeſt ſon ſhould inherit a fee-ſimple, *per form' doni* at the common law: So if lands were given to one, and to his heirs females of his body, and he had iſſue a ſon and a daughter, and died, the daughter ſhould inherit an eſtate in fee-ſimple *per form' doni.* And mark well the ſtatute *de donis, &c.* doth not create an eſtate-tail, but of ſuch eſtate as was fee-ſimple conditional, and deſcendable in ſuch form at the common law, as now by the ſtatute the land ſhall deſcend; and the only miſchief was, that the donee after iſſue had power to alien in diſinheriſon of his iſſues, and bar of the rev'n: But it doth not appeare by the ſaid act, that although the donee had iſſue, yet he had not an abſolute fee, ſo that the collateral heir of the iſſue ſhould inherit; for the words of the act are, *Et præterea cum deficiente exitu de hujuſm' feoffatis, tenement' ſic datum ad donator' vel ad ejus hæred' reverti debuit per form' in carta de dono hujuſm' expreſſam, licet exitus, ſi quis fuerit, obiiſſet, per factum tamen & feoffamentum, &c. excluſi fuerunt hucuſque de reverſione, &c.* by which it appears, that if the heir in tail dies without iſſue, and without any alienation made, that the land ſhall revert, and by conſequence ſhall not deſcend
Co. lit. 19. a. to the collateral heir, 30 EDW. I. *formed.* 65. If the donee in tail aliened before the ſtatute and afterwards had iſſue, and then the iſſue died without iſſue, the land ſhould revert: For he had not power to alien at the time of the alienation, but ſuch alienation ſhould bar the iſſue, as it is adjudged in 19 EDW. II.
Co. lit. 19. a. 20. a. 1 Rol. 837. *formed.* 61. becauſe he claimed fee-ſimple. *N. B.* Theſe rules yet hold place in caſe of a grant of an annuity to one and the heirs males of his body, and all other inheritances which are not within the ſtatute *de donis conditional'*.

HENRY

HENRY earl of Kent, Complt.

GEORGE ROTHERAM Esq; WILLIAM DETHICK, Garter. } Defendts.

E. Coll. Greg. King Lanc'. herald.

THAT Garter principal king of armes, 36 ELIZ. *reginæ*, did corruptly and againſt his own knowledge, contrive and publiſh under the ſeal of his office, a falſe pedigree for GEORGE ROTHERAM; whereby he did derive the ſaid GEORGE to be deſcended of ſir THOMAS ROTHERAM his great grandfather, and CATHERINE his wife, untruly therein affirmed, to be daughter and heir to ANTHONY lord Grey of Ruthyn, eldeſt ſon to EDMOND earl of Kent, when (in truth) the ſaid CATHERINE was daughter of JOHN lord Grey of Wilton. The complaint againſt Garter.

That GEORGE ROTHERAM knowing his pretence therein to be falſe, did nevertheleſs unlawfully practiſe with, and procure Garter, to make for him the ſaid falſe pedigree. The complaint againſt ROTHERAM.

By this falſe pedigree the now earl of Kent is to be defeated of the honour, dignity and baronies of HASTINGS, Waiſford and Ruthyn, and of divers mannors and poſſeſſions to him deſcended as lord Grey of Ruthyn, from the ſaid EDMOND earl of Kent. The grievance to the earl.

By the ſame alſo her Majeſtie is to loſe the honour of Ampthill, the caſtle of Ruthyn, and ſundry other mannors and lands of great value, for that the ſaid ſuppoſed title of ROTHERAM's, comes above the Queen's, if the ſaid pedigree falſely ſet down ſhould be true. To the Queen's Majeſtie.

The queſtions are two, The queſtions 2.

Firſt, Whether the pedigree be falſe.

Secondly, Whether it was ſo known to be, to Garter and ROTHERAM.

That the pedigree is falſe is proved two wayes:

Firſt in the negative, that ANTHONY lord Grey of Ruthyn had never any ſuch daughter named CATHERINE, married to ſir THOMAS ROTHERAM, nor any other child, nor ever had any wife.

Secondly in the affirmative, that the ſame ſuppoſed CATHERINE, wife to ſir THOMAS ROTHERAM, was daughter to the lord Grey of Wilton.

ROTHERAM's ſuppoſed match with CATHERINE daughter of ANTHONY is diſproved, by all heralds books, deeds, and records.

IT appeareth by all the regiſters, and books of armes, and pedigrees, as well in Garter's own office (as himſelf confeſſeth) as the reſt, and not any to the contrary; that there is no mention of any iſſue of the ſaid ANTHONY; and in ſome it is ſet down preciſely, that he dyed without iſſue, in the life of EDMOND his father, as Garter himſelf likewiſe confeſſeth upon his oath to have been ſeen of him, and ſhewed unto ROTHERAM before the ſaid falſe pedigree made *. By the ſame books GEORGE earl of Kent, younger brother to the ſaid ANTHONY, and great grandfather to the now earl, is ſet down to be ſon and heir of EDMOND. Heralds books. That ANTONY dyed without iſſue. * That GEORGE was ſon and heir of EDMOND.

According to the ſame books, and upon conſideration of them, pedigrees have been made out, and delivered by COOK, late Clarenceux, and GLOVER, late Somerſet.

Deeds. In one biſhop ROTHERAM, and JOHN father to ſir THOMAS, were parties.

It is proved by ſeveral deeds as well from, as to the ſaid GEORGE, ANTHONY's younger brother, that ANTHONY could have no iſſue.

It appeareth by ſeveral records, that the ſaid GEORGE was ſon and heir to EDMOND earl of Kent.

Records. Proofs of ROTHERAM's match with CATHERINE, daughter of the lord GREY of Wilton.

Garter's and the heralds books, and regiſters of armes and pedigrees, do plainly manifeſt the ſame; pedigrees have been made out by the ſaid late Clarenceux and Somerſet accordingly.

The ſame appeareth by matter precedent and ſubſequent the making thereof.

Before the making thereof it is proved, that upon the occaſion of ROTHERAM's falſe claim, he did peruſe and compare all the books of his office, and found them againſt him *ut ſupra*.

That Garter knew the pedigree to be falſe.

Before the falſe pedigree, Garter made for ROTHERAM a pedigree, which did derive him from the houſe of WILTON, according to the truth.

Precedent.

Upon the making of the falſe pedigree, he did not conferr with any other of the heralds, nor acquainted the earl of Kent with it, being a matter of that weight.

Subſequent.

After the making of the falſe pedigree, he did not only conceal it to the earl and his friends, but denyed the making thereof; firſt to thoſe that charged him with it from the earl of Kent, and after to others, he expoſtulated with ROTHERAM in great choler for diſcovering it.

After he uttered theſe ſpeeches to them that were ſent unto him from the earl of Kent; that ROTHERAM in an ambitious humour had been earneſt with him for ſuch a pedigree, and had ſhewed him all his proofs, and that he had told ROTHERAM, his proofs were but toys, trifles, and ſmoke, and ſuch as could never endure the light, and no ſufficient warrant to make him ſuch a pedigree; and that ſuch a pedigree was not juſtifiable, nor could ever endure the light; and that he had likewiſe told ROTHERAM, that ANTHONY dyed without iſſue, and that if he were deſcended of any ſuch CATHERINE his daughter, ſhe was a baſtard; affirming that he had ſo ſatisfied ROTHERAM therein, that he was reſolved to deal no farther in that matter.

Garter is ambi-dexter.

After the falſe pedigree, he made another pedigree for the earl of Kent, contrary to the ſaid falſe pedigree, and upon the making of the ſame, he was deſired to do it truly, and adviſedly; and upon the delivery of it, he did avouch it to be the true pedigree, and ſo now alſo upon his examination confeſſeth.

Garter ſwareth contrary to his falſe pedigree, and ſubſcription thereof.

In the examining of this matter, by ſhifting to excuſe the matter, he hath croſſed the falſe pedigree by his oath, and one depoſition by another; as whereas he hath ſet it down in his falſe pedigree, and in one of his depoſitions directly that it appeared in his bookes, that THOMAS ROTHERAM was great grandfather to GEORGE ROTHERAM; in his other depoſitions, he ſaith that he doth not know, neither doth it appear in any of his books, that the ſaid THOMAS was great grandfather to the defendant.

In one depoſition he ſaith, that in all his books there was no mention of ANTHONY, and in another he ſaith, he ſhewed ROTHERAM in one of his books, that ANTHONY dyed without iſſue.

That ROTHERAM knew the pedigree to be falſe.

Before he did attempt Garter, ROTHERAM dealt with COOK late Clarenceux, to make him the like falſe pedigree, who ſearched his books, conferred with other heralds, and thereupon told him flatly that his pretence was not juſtifiable, and that he would not make ſuch a one for any money.

That he did ſee and peruſe Garter, and late Clarenceux, their books, which ſet forth the true pedigree of the earl of Kent, and that ANTHONY dyed without iſſue, and the match of ROTHERAM with WILTON, *ut ſupra*.

That ROTHERAM ſuggeſted falſely, and againſt his own knowledge, to fortifie his title; that certain lands, namely the mannor of Dunton and Goyſes, eſcheated to king EDW. IV. by the attainder of ſir JOHN MANINGHAM, and were given by

the ſame King to ANTHONY and his heirs; and that after the ſame mannors were his anceſtors; inferring thereby, they had them by the marriage of CATHERINE, ANTHONY's daughter and heir; whereas he knew, both that the ſaid attainder was after reverſed by act of parliament, and MANINGHAM reſtored to his lands; and by him conveyed by fine to archbiſhop ROTHERAM, and ſo deſcended to his great grandfather, as by the ſaid fyne and office of his great grandfather appears.

That Garter affirmed he had ROTHERAM's promiſe to ſave him harmleſs.

That ROTHERAM ſought to make a gain of his title, offering it to be releaſed for money, and therefore (as it ſeems) procured this falſe pedigree, to give it credence for his greater benefit.

That he hath pretended title to the earldome of Kent, and not only to the baronies, contrary to that he hath ſworne in his anſwer.

The objections of ROTHERAM's part, and the anſwers to them.

Obj. 1. FIRST a brotherhood book of Luton, where are regiſtered ANTHONY lord Grey of Ruthyn, & JOHANNA *conſors ſua*, for a brother and a ſiſter. Brotherhood book.

Reſponſ. Garter himſelf in deriſion called it a brotherhood book of a ſort of Maltmen, and a matter of no importance; and it proveth nothing for ROTHERAM; for ANTHONY (though he were married) might dye without iſſue.

Obj. 2. Secondly, the grave-ſtone of ſir THOMAS ROTHERAM, and CATHERINE his wife in Luton-church, whereon are engraven and empaled with the armes of ROTHERAM, the armes of the houſe of Kent. Grave-ſtone.

Reſponſ. This proof Garter made light of, ſaying, *Quis pinxit leonem*, and the difference of the coats of WILTON and RUTHYN, is but nice; *viz.* three tortoiſes in chief, in the earl of Kent's coat, and none in the lord GREY of Wilton's; and therefore might the more eaſily be miſtaken by a maſon or graver, and ANNE the mother of CATHERINE of Wilton, was daughter of EDMOND earl of Kent. Torteauxes.

Obj. 3. Thirdly, a letter written by CATHERINE wife of EDMOND earl of Kent to CATHERINE, wife to ſir THOMAS ROTHERAM, whereby ſhe calls her daughter. Letter.

Reſponſ. It is confeſſed on all ſides, that the lord GREY of Wilton married the ſaid ANNE, daughter of EDMOND earl of Kent, and therefore that name agrees as well to her being her daughter's daughter, as if ſhe had been her ſon's daughter.

Obj. 4. Fourthly, an indenture made in 21 EDW. IV. wherein a marriage was concluded between TIRRINGHAM and the ſaid CATHERINE, daughter of the lord GREY of Wilton; whereupon ROTHERAM inferreth, ſhe was not married to his great grandfather. Indenture.

Reſponſ. It is plainly proved by the office of TIRRINGHAM, and other records, that this marriage never took effect, and it is likewiſe evident that TIRRINGHAM dyed young; and ſo though it had taken effect, ſhe might after marry with ROTHERAM, and it appeareth not, either by any heralds book, or any monument, pedigree, or other writing, remaining with the TIRRINGHAMS, that that match ever took effect.

BEE it known to all perſons of all eſtates, to whom theſe preſents ſhall come; That wee WILLIAM lord Burghley knight of the order of the garter, and lord treaſurer of England, and CHARLES lord Howard of Effingham, knight of the ſaid order of the garter, lord admiral of England, both of us lawfully authorized by the Queen's moſt excellent Majeſty, ELIZABETH, by the grace of GOD queen of England, France and Ireland, defender of the Faith, *&c.* to hold and exerciſe the office of the earl marſhal of England: Having had preſented unto

us

us a complaint in writing by the right honourable HENRY earl of Kent, lord of Haſtings, Waiſford, and Ruthin, which wee have heard againſt GEORGE ROTHERAM, eſquire, and WILLIAM DETHICK, named by office Garter king at arms; for making and publiſhing a falſe pedigree, whereby they did derive the ſaid GEORGE ROTHERAM, to be lineally heir general to EDMOND earl of Kent; that is to ſay, ſon and heir of THOMAS ROTHERAM, ſon and heir of ſir THOMAS ROTHERAM, ſon and heir of ſir THOMAS ROTHERAM and CATHERINE his wife, daughter and heir general of ANTHONY, lord Grey of Ruthin, eldeſt ſon and heir apparent to the ſaid EDMOND earl of Kent; and hath in the ſaid pedigree depicted a ſhield of the armes of the ſaid EDMOND earl of Kent, quartered without difference, with the proper armes of the ſaid GEORGE ROTHERAM, *viz.* with the arms of *Vert*, three roe bucks *Or*: By the which pedigree ſo made and publiſhed, the ſaid HENRY earl of Kent complaineth to be greatly prejudiced; for that he alledgeth himſelf to be coſin and next heir to the ſaid EDMOND earl of Kent, and ought to bear the armes of the ſaid EDMOND earl of Kent without any difference; that is, the armes of BARRY of ſix pieces, *argent* and *azure*, three *torteaux* in chief, gules, being the true armes of the ſaid EDMOND earl of Kent, and of his houſe and family, without any difference; which ſaid EDMOND had iſſue two ſons, ANTHONY his eldeſt ſon, and GEORGE his ſecond ſon, and the ſaid ANTHONY dyed in the life of his father without iſſue; and afterwards the ſaid EDMOND dyed ſo ſeiſed of the ſaid armes; after whoſe deceaſe, the ſame armes deſcended of right unto GEORGE GREY earl of Kent, as ſon and heir of the ſaid EDMOND, who dyed thereof ſeiſed: After whoſe deceaſe, the ſame armes deſcended unto ſir HENRY GREY, knight, ſon and heir of the ſaid GEORGE earl of Kent; and the ſaid ſir HENRY had iſſue HENRY GREY his ſon and heir apparent, who dyed in the life of his father, having iſſue REYNOLD GREY late earl of Kent, and HENRY GREY now earl of Kent; and the ſaid ſir HENRY GREY dyed ſeiſed of the ſaid armes; after whoſe deceaſe, the ſame deſcended to REYNOLD GREY, as couſin and next heir of the ſaid ſir HENRY; and after the ſaid REYNOLD dyed ſo ſeiſed, without any iſſue of his body; after whoſe deceaſe the ſaid armes came to HENRY, now earl of Kent, the complainant, as brother and heir of the ſaid REYNOLD, and coſin and heir of the aforeſaid EDMOND earl of Kent.

Unto which complaint the ſaid HENRY earl of Kent hath required of us, exerciſing the office of the earl marſhal of England, to call before us the ſaid WILLIAM DETHICK, *alias* Garter, and GEORGE ROTHERAM, to anſwer to the ſaid complaint, and to abide ſuch order as ſhall ſtand with the laws of chivalrie, and cuſtome of armes; whereupon the ſaid GEORGE ROTHERAM and Garter were called before us; to whom we delivered the complaint of the ſaid HENRY earl of Kent in writing; to which they made their ſeveral anſwers alſo in writing; that is to ſay, the ſaid GEORGE ROTHERAM for maintenance of his claim, to be the couſin and heir general of the ſaid EDMOND earl of Kent, ſayeth, that the ſaid EDMOND earl of Kent did lawfully bear the armes aforeſaid; and was lawfully ſeiſed of three baronies in fee-ſimple; and ſo ſeiſed, had iſſue ANTHONY his eldeſt ſon and heir apparent, and GEORGE his ſecond ſon; and the ſaid ANTHONY had iſſue CATHERINE his only daughter, who was married to the ſaid ſir THOMAS ROTHERAM, knight, and by him had iſſue of her body the ſaid ſir THOMAS ROTHERAM, knight, his ſon and heir, who had iſſue the ſaid THOMAS ROTHERAM, eſquire, who had iſſue the ſaid GEORGE ROTHERAM, his ſon and heir, now defendant, and thereby couſin and heir general to the ſaid EDMOND ſometime earl of Kent: And therefore, after he had looked into divers records and writings, and had viewed the monuments of his anceſtors, and perceiving his deſcent to be as aforeſaid; he did impart the ſame unto Garter in the bill mentioned, praying him to examine the ſame according to right and due form of the laws and cuſtomes of armes, to ſet down the defendant's pedigree, and true deſcent, and to depict in an eſcocheon, how this defendant ought to bear the ſame armes.

Whereupon

Whereupon the ſaid Garter did allow this defendant GEORGE ROTHERAM, to bear and quarter, the foreſaid armes of EDMOND, ſometime earl of Kent, without any difference, and alſo did ſet down in writing this defendant's pedigree; deriving him to be heir general to the ſaid EDMOND, ſometime earl of Kent; and alſo depicted a ſheild quartering the ſaid armes of the earl of Kent, with the proper armes of the ſaid GEORGE ROTHERAM. And for further declaration of his title, the ſaid GEORGE ROTHERAM did alledge, that GEORGE, earl of Kent, by whom the Complainant maketh his deſcent, had iſſue RICHARD, his eldeſt ſon, by a daughter of the earl Rivers, and by a ſecond wife, the daughter of the earl of Pembroke, HENRY, the grandfather of the complainant; and the ſaid RICHARD after the death of the ſaid GEORGE, earl of Kent, entered into all the lands, whereof the ſaid GEORGE, earl of Kent, or EDMOND, earl of Kent were ſeiſed in fee-ſimple, and ſo was poſſeſſed of all the armes and honours (except the earldome, which was entailed to EDMOND, earl of Kent, and the heirs males of his body) deſcendible by the laws of this realm to the next heir general of the whole bloud, which was not the ſaid HENRY, grandfather of the complainant, being brother of the half bloud to the ſaid RICHARD.

And likewiſe the ſaid Garter for his anſwer ſayeth, That the pedigrees of the ſaid complainant, and of the ſaid GEORGE ROTHERAM, are mentioned in ſome books remaining in his office, and in ſome books not ſo fully, but do vary, and are left doubtfull, and that he never combined himſelf with any perſon unlawfully to deprive the ſaid complainant of his armes, or to drive him to bear the ſame with a difference of a younger houſe, or to entitle the ſaid GEORGE ROTHERAM to quarter the ſame, without any difference: But he ſayeth, that before the three and twentieth of April, in the ſix and thirtieth year of her Majeſtie's reign, the ſaid GEORGE ROTHERAM repaired unto him, requiring him to make him a true pedigree of his deſcent; And for his better information the ſaid GEORGE ROTHERAM ſhewed to him divers evidences, records, writings, and monuments, in his opinion proving his deſcent, as the ſame hath been ſet down by him for the ſaid GEORGE ROTHERAM, with which the complainant doth find himſelf grieved; and becauſe he found the truth of the pedigree of the ſaid ROTHERAM, with the quartered coats of armes, to be in his judgment as it is now ſet down by him; and that his predeceſſors had reformed pedigrees and armes, and aſſigned them according to proofs made before him, therefore he, upon the proofs made by the ſaid GEORGE ROTHERAM, as he conceived it, did aſſign to the ſaid GEORGE ROTHERAM, the armes of the ſaid EDMOND, ſometime earl of Kent, to be quartered without difference, with the proper armes of the ſaid GEORGE ROTHERAM, which he believed he had ſufficient warrant to do, before he attempted the ſame.

Upon which complaint of the ſaid earl of Kent, and the ſaid ſeveral anſwers of ROTHERAM and Garter, both the ſaid complainant and the defendants were called before us at Weſtminſter on Friday the ſeven and twentieth day of May laſt paſt, and after their complaint and anſwers in writing orderly read, and heard by us; they were alſo by their learned counſel on all parts heard by us, at great length to maintain the matters contained in the complaint, and in the two ſeveral anſwers, for the which there was produced and ſhewed divers arguments, both by matter of record and other writings and teſtimonies for the maintenance of their ſeveral claims; and notwithſtanding the diverſities of matters alledged on both parts, and the ſame by us compared together, upon their replications on every ſide, being after our firſt hearing oftentimes delivered to us, both by ſpeech and writings, wee did with great deliberation conſider what was to be judged moſt true and direct, both for the bearing of the ſaid armes, and making and publiſhing of the ſaid pedigrees, which were the only principal matters determinable by our authority; and did find very probably, and ſo do judge, that conſidering there hath been no good proof to us by the ſaid ROTHERAM nor Garter that ANTHONY, the elder ſon of EDMOND, earl of Kent, had any ſuch daughter of his body, as hath been pretended by the ſaid GEORGE ROTHERAM,

THERAM, and of whom the ſaid GEORGE ROTHERAM pretended to be deſcended; but wee find it confeſſed on all parts, that the ſaid ANTHONY, dyed in the life of his father EDMOND, earl of Kent, and by other proofs we find that he left no iſſue of his body, though he was married to JOAN, one of the ſiſters of the earl Rivers; after whoſe death, we find by office, in *anno ſeptimo regis* HENRICI VII. that the ſaid earl Rivers dyed without iſſue of his body; and that THOMAS, marquis of Dorſet was ſon and heir of ELIZABETH, one of the ſiſters and heirs of the ſaid earl Rivers; and that CATHERINE, the wife of JASPAR, duke of Bedford was another ſiſter and heir of the ſaid earl Rivers; and that HENRY, earl of Eſſex was the ſon and heir of ANNE, another of the ſiſters and heirs of the ſaid earl Rivers; and that WILLIAM, lord Matravers, was ſon and heir of MARGARET, another ſiſter and heir of the ſaid earl Rivers; and that ELIZABETH, lady Herbert, was daughter and heir of MARY, another ſiſter and heir of the ſaid earl; and that JOAN, the wife of GEORGE, lord Strange, was the daughter of JAQUET, one other ſiſter and heir of the ſaid earl; all which ſix were found to be heirs of the ſaid RICHARD, earl Rivers, *propinquiores*; and that no mention is in that office of any other to be the heirs of the ſaid earl Rivers, ſo as the ſaid GEORGE ROTHERAM could have no juſt title, as heir to any daughter of the ſaid ANTHONY, and the ſiſter of the ſaid earl Rivers, as he pretended, thereby to bear or quarter the armes of the ſaid ANTHONY; but wee alſo find proved, that the ſaid ANTHONY, dying in the life of his father, the whole inheritance of the ſaid EDMOND, earl of Kent, deſcended unto GEORGE GREY, earl of Kent, younger brother to the ſaid ANTHONY, immediately after his father EDMOND's death; and no office then found that is ſhewed to us, that ANTHONY had any iſſue; which GEORGE, earl of Kent, as being the brother of the ſaid ANTHONY, and ſon and heir to his father, entered into the poſſeſſions of his father EDMOND; and wee find by records that the ſaid GEORGE, earl of Kent, was found ſon and heir to his father EDMOND, and ſo he ſued his livery as ſon and heir to the ſaid EDMOND, *anno quinto* of king HENRY VII, of all his father's poſſeſſions, which poſſeſſions in fee-ſimple and fee-tail general, ſhould have deſcended to the daughter of ANTHONY, if he had had any ſuch daughter; and afterwards the ſaid GEORGE, earl of Kent, had iſſue RICHARD, earl of Kent, his eldeſt ſon by one venter, who dyed without iſſue, and ſo the inheritance of GEORGE, earl of Kent, after the death of RICHARD, came to ſir HENRY GREY, knight, being by another venter, the ſecond ſon of the ſaid GEORGE, earl of Kent, and father of HENRY GREY, father of REYNOLD GREY, late earl of Kent, that dyed without iſſue, and was elder brother to HENRY, now earl of Kent, who now is lawfully poſſeſſed of the ſaid armes, to be borne without difference, which for the ſpace of one hundred and ſeven years and more, none of the ſaid ROTHERAM's anceſtors, ſithence the death of EDMOND, earl of Kent, which was in the fifth year of king HENRY VII. untill the ſix and thirtieth year of the Queen's Majeſtie's reign, ever are known to have made title, or claim, to the ſaid armes, or poſſeſſions.

And therefore in our judgments, upon full hearing of all reaſons on both parts, at ſundry times, and by their ſundry anſwers, and replications on both parts, we do determine and decree, That the ſaid WILLIAM DETHICK, named Garter, and the ſaid GEORGE ROTHERAM, have manifeſtly done wrong to the complainant, in making and publiſhing of the ſaid pedigree, in a caſe ſo long ſuſpended without claim, to make a ſhew that the ſaid GEORGE ROTHERAM, is deſcended lineally of one CATHERINE, as a daughter and heir of ANTHONY, lord Grey of Ruthyn, who is proved before us, by divers means of good credit, to have dyed without iſſue, and no good proof made that the ſaid ANTHONY, had iſſue any one called CATHERINE as is pretended to have been married to ſir THOMAS ROTHERAM.

And therefore by the authority that we have of the office of earl marſhal, and that ſpecially being by our commiſſion authorized with full power, from time to time, to call before us all officers of arms, both kings of arms, heralds and purſuivants, and

to cauſe due inquiſition to be made of all manner of arms by them given to any perſon, without good warrant, or uſurped and taken by any perſon without good warrant: And upon due examination and tryal thereof, to revoke and diſannull all ſuch as ſhall be ſo tryed unlawfully aſſigned, or uſurped by any perſon. By force of which our authoritie, wee do revoke and diſannull the bearing of the ſaid armes of the earl of Kent, ſo quartered by the ſaid GEORGE ROTHERAM, and do judge them to be by him unlawfully borne; and do alſo determine that part of the pedigree made by Garter to be unlawfull, by which the ſaid ROTHERAM is made to be the couſin and heir general of the ſaid EDMOND, earl of Kent, by the ſaid ANTHONY, eldeſt ſon of the ſaid EDMOND, earl of Kent; and ſo do will this our judgment to be obeyed and continued without any contradiction, untill we ſhall have better proof made before us by the ſaid GEORGE ROTHERAM, and Garter, to alter the ſame in any part: And do reſerve to our power, authority to tax the coſts and expences for the ſaid complaint againſt the defendants.

In witneſs hereof, we have pronounced this our judgment before the ſaid parties; and being put in writing, have cauſed both the ſaid earl of Kent, the complainant, and the ſaid GEORGE ROTHERAM, and Garter, the defendants, to hear the ſame openly read unto them, on Wedneſday the two and twentieth day of June, in the nine and thirtieth year of the Queen's Majeſtie's reign, and in the year of our Lord 1597. And have hereunto ſet our hands and ſeals, the ſame day and year.

W. BURGHLEY. C. HOWARD.

The

The declaration of our ſovereign lord the King, by the deliberate advice and full aſſent, as well of all the lords and others of his Majeſty's privy council, as of the maſter of the rolls, and his Highneſs's counſel learned in the law, concerning the title of his Majeſty's moſt noble and deareſt ſon CHARLES, the prince and duke of York to the duchy of Cornwal.

† Publiſhed by the King's Majeſty's commandment 1613.

The caſe of the duchy of Cornwall.

WHEREAS upon the death of the late high and excellent HENRY, prince of Wales, duke of Cornwall, and earl of Cheſter, his Majeſty's eldeſt ſon, ſome queſtion and doubt was made, whether the high and excellent prince CHARLES, duke of York, (his Majeſty's now eldeſt ſon) were by and after the death of his ſaid brother (*ipſo facto*) duke of Cornwall, and ſeiſed of the ſaid duchy by the laws and ſtatutes of this realm, or not: Foraſmuch as the ſaid queſtion appeared to be of great conſequence, in reſpect that it concerned the inherent honour, not only of the ſaid prince CHARLES for the preſent, but likewiſe of all ſuch as ſhould (by the death of a firſt born) become ſons and heirs apparent to the Kings of this realm in all ſucceeding ages; and alſo in reſpect of the great and large poſſeſſions belonging to the ſaid duchy; the right and ordering whereof, and of all the officers, tenants, farmers, and occupiers of the ſame, and every part thereof, doth wholly depend upon the reſolution of the ſaid title of the ſaid duke CHARLES, thereunto. His Majeſty therefore out of his princely providence required to be informed, how the law and former precedents ſtood in this caſe.

In the conſideration whereof it appeared at the firſt view, that this doubt aroſe only out of a literal conſtruction of the word *filius primogenitus*, contained in that ſingular form of limitation of the eſtate of the ſaid duchy, made by patent, enacted by parliament, *anno* 11 of king EDWARD III. Whereby the King (reciting that he had given to EDWARD, earl of Cheſter, his firſt begotten ſon, the name and honour of duke of Cornwall, by conſent of parliament) did by the ſaid patent alſo give him the duchy of Cornwall, and large poſſeſſions in the ſame patent particularly ſet down in theſe words: To have and to hold, *&c.* to the ſaid duke, and to the firſt begotten ſon of him and of his heirs, Kings of England and dukes of the ſaid place, that hereditarily ſucceed in the kingdom of England. All which ſaid caſtles, *&c.* we do by this our preſent patent, for us and our heirs, annex and unite to the foreſaid duchy, to remain unto the ſame for ever: So as they may in no wiſe be at any time ſeparated from the ſaid duchy, nor be given, or any way granted by us, or our heirs, to any other or others, than unto the dukes of the ſaid place. So alſo, that the foreſaid duke, or other dukes of the ſame place deceaſing, and a ſon, or ſons, to whom the ſaid duchy is, by vertue of our foreſaid gift and grant known to belong, then not appearing: The ſaid duchy with the caſtles, *&c.* do return to us or our heirs, Kings of England, to be retained in our hands, and in the hands of our heirs the Kings of England, until ſuch time as ſuch ſon and ſons who ſhall be hereditarily to ſucceed in the ſaid kingdom of England, as is aforeſaid, ſhall appear.

† See the Prince's caſe in COKE's 8th report, page 14.

appear. Unto whom we do then for us and our heirs ſucceſſively grant the ſaid duchy, with the appurtenances, and will have it to be delivered to be ſo held, as is formerly expreſſed.

Whereupon ſome opinion hath been conceived, that becauſe the gift is (*filiis primogenitis*) that therefore no ſon can take by that limitation, except there were no ſon born before him. So that the doubt or queſtion only conſiſteth, Whether by the words, ſenſe, and meaning of the ſaid ſtatute of 11 EDW. III. *filius primogenitus natus* only, or *filius primogenitus exiſtens*, by the limitation of that ſtatute, be to be inheritor of the ſaid dukedom of Cornwall, and the poſſeſſions thereof.

The reaſons and grounds that moved the King's moſt excellent Majeſty, and the lords of his Highneſs's privy council, to conceive and reſolve concerning the truth of the ſtate of that queſtion, as in the end of this caſe is reported, were theſe.

The firſt was the meaning, intention, and purpoſe of the ſaid ſtatute of 11 EDW. III. and the cauſe of the making thereof.

The ſecond, was the precedents, examples, uſe, and practice ever ſince the making of the ſaid ſtatute.

The third, the explanation and expoſition of the true ſenſe and meaning of the words in the ſaid ſtatute contained, (being *filius primogenitus*, or *filiis primogenitis*) as by ſtatutes and precedents both before the ſaid ſtatute of 11 EDW. III. and ſince appeareth.

As to the firſt point concerning the meaning, intention, and purpoſe of the ſaid ſtatute of 11 EDW. III. and the cauſe of the making thereof.

Firſt, that the word (*primogenitus* in this act) is not of ſo ſtrict a ſenſe, and that it is violence to the word to take it only ſo: For it is both in letter, meaning, and common acceptation, underſtood and taken, as well for the firſt born in being, or the eldeſt ſon for the time, (which are words of one ſignification and uſe) as for him that was originally the firſt born, or had none other born before him.

Secondly, It appeareth by the precedents and examples hereafter following, that the word (*primogenitus*) is as well to be applied to him that ſtands *filius primogenitus*, or eldeſt ſon, or *eiſné fitz*, for the time, as to him that always hath been *primogenitus*. And though the ſcruple be made upon the word (*primogenitus*) and not upon the Engliſh or French word (eldeſt or *eiſné*) yet the reaſon is the ſame in all the words, for they are neither eldeſt, nor *eiſnéz*, but in reſpect of the living, forgetting the dead, becauſe they are not in being.

And if this conſtruction be in any caſe allowed, much more doth the apparent motive and purpoſe of this grant of the duchy of Cornwall, make the reaſon of this conſtruction moſt plain and forcible; for king EDWARD III. (being a mighty and glorious Prince, and entertaining in his mind great hopes, which it pleaſed GOD he did after alſo happily accompliſh) conceived it ſuitable to his own greatneſs, to erect and create for his own eldeſt ſon, and for the eldeſt ſons of the Kings of England for ever after inheritable to the crown, an honour and dignity, with poſſeſſions and liberties annexed, proportionable to their ſtate and expectation; and therefore did make the grant and ordinance in queſtion by parliament, in the form and words before recited.

In as much therefore, as the eldeſt ſon in being inheritable to the crown, hath now the firſt place amongſt the living, and the dead come not into account: Since all the attributes of greatneſs and honour are devolved unto him, that were before in his elder brother deceaſed, ſince all the charges for ſupportation of the ſtate, and magnificence of the firſt and eldeſt lie upon him; ſince now it is ſaid of him, That he is held as one perſon with the King himſelf; and that it is now high treaſon to conſpire his death, (which is proper to the eldeſt ſon:) doth any man ſuppoſe that the parliament ſhould deny him the title

of duke of Cornwall, and the poſſeſſions of the ſame duchy, for whom GOD and nature have made a way to all the rights that may deſerve it?

And (to make it appear how abſurd the conſequence of this ſtrict conſtruction may prove) ſuppoſe that the firſt begotten ſon ſhould be born and die both in a day, ſo that a man might ſay of him, *oritur, moritur* (and ſome firſt born have been ſhort lived indeed:) Should this untimely fruit ſhut up the way to the dukedom againſt all his brethren that ſhould follow, and live to bear the heat and labour of the day? For it is true, that he was *primogenitus*, and it is alſo true that he was *dux natus*, with his firſt breath a duke, and the poſſeſſions of the duchy were by law (*ipſo facto*) caſt upon him: For *primogenitus non ſuſcipit magis & minus*: So as if no ſon of a king, but the mere firſt can be duke, it followeth of neceſſity that the reſt muſt be excluded; which how far it is from reaſon and from the intent and proviſion of this law, every eye can ſee. Yet it is true, that the word of the law muſt not be neglected, which appeareth plainly in the caſe of RICHARD (after RICHARD II.) eldeſt ſon of the ſame prince EDWARD, who died in the life of king EDWARD III. his father: By means whereof the ſame RICHARD, became lineal heir male to the King and crown; yet becauſe he was not the eldeſt ſon of a king, but of a king's ſon, he was not duke of Cornwall by the right of that grant and limitation, but was made duke by king EDWARD III. by his letters patents, not by parliament: And the limitation of the duchy to him, was of the other and more common form, To him, and to his heirs kings of England.

By which the precedents are ſtrengthened; for it appears that they paſſed not in ſilence, or by the improvidence of the ſtate: For by this caſe of RICHARD II. the ſtate appeareth to have been always watchful and curious in diſcerning who were capable, and who not, of the duchy by force of the ſaid limitation, being a caſe of ſo great mark and importance.

And by the ſame reaſon, no daughter and heir of the kings of England, hath ever been admitted to this title, though there hath been both the lady MARY, the eldeſt daughter of king HENRY VIII. and his heir apparent for a good time; and the lady ELIZABETH, the eldeſt daughter of king EDWARD IV. as being excluded by two parts of the limitation, for they were neither *filii primogeniti*, nor to ſucceed in the kingdom of England: For though daughters might ſucceed, and ſo did ſometimes, yet that clauſe imports, That they muſt ſtand in certain ſucceſſion, which a daughter never doth, becauſe a ſon (whenſoever born) puts her out.

As to the ſecond point, concerning the precedents and examples, that ever ſince the making of that ſtatute have happened or fallen within the compaſs of this preſent queſtion (*viz.* Whether the ſecond ſon of the king of England, inheritable to the crown, ſhould be duke of Cornwall, after the death of the eldeſt, or *filius primogenitus*, of the king, dying without iſſue in the life of the king his father) they have been and are only two, namely, prince EDWARD (after king EDWARD VI.) and prince HENRY (after king HENRY VIII.) who were both ſecond ſons to the kings their fathers, and were both dukes of Cornwall without creation, but only by the ſaid ſtatute of 11 EDW. III.

For the firſt, to make a queſtion, Whether prince EDWARD were duke of Cornwall after the death of HENRY the firſt begotten ſon of king HENRY VIII. were to move a queſtion queſtionleſs; for the living yet do well remember, and know the ſame. And the records of that time do apparently juſtify and approve it: and therefore will I forbear to endeavour to prove that, which in itſelf and of itſelf is ſo queſtionleſs, apparently and manifeſtly true.

The ſecond precedent concerning the queſtion aforeſaid, was prince HENRY, ſecond ſon to king HENRY VII, who after the death of prince ARTHUR his elder brother, was duke of Cornwall by birth, without creation; for he was never created duke of Cornwall: The proof whereof is as followeth.

First it appeareth, that king HENRY VII. in October, 19. of his reign, granted a commiſſion under the great ſeal of England, to GILBERT TALBOT, knight, counſellor to his deareſt ſecond begotten ſon HENRY, duke of Cornwall, *&c.* Whereby it appeareth, that the King his father then conceived and ſtiled him duke of Cornwall, and yet called him by the ſame record his ſecond begotten ſon.

Secondly, King HENRY VII. in February, 19 of his reign in parliament made by theſe words, (With the counſel and aſſent of the prelates, dukes, earls, and barons of our kingdom of England being in this our preſent parliament; we have made and created, and do make and create HENRY prince of Wales and earl of Cheſter, and we do give and grant unto the ſaid HENRY the name, ſtile, ſtate, dignity and honour of the ſaid principality and earldom, *&c.*) but did not create him duke of Cornwall; which he would have done, if he had not been duke of Cornwall before by his birth without creation.

Thirdly, In the ſame parliament of 19 HEN. VII. there paſſed an act of parliament in theſe words: Whereas it hath pleaſed Almighty GOD to call the King's deareſt ſon HENRY, duke of York, to be now the King's heir apparent, and prince of Wales, duke of Cornwall and earl of Cheſter, by reaſon whereof he hath great and notable poſſeſſions: Wherefore it is for him convenient to leave and be diſcharged of the ſaid name of duke of York, dignity and preeminence thereof, and of all ſuch annuities, fees, offices, and other poſſeſſions and hereditaments by the King's Highneſs to him given and granted before the firſt day of this preſent parliament: Be it therefore enacted, ordained and eſtabliſhed, by the advice and aſſent of the lords ſpiritual and temporal, and the commons in this preſent parliament aſſembled, and by the authority of the ſame, that the ſaid erection and creation to the King's ſaid ſon, made to him as to the duke of York, and all his eſtate, dignity and preeminence by reaſon of the ſame, and the annuity to him granted by the King our ſovereign lord, of, for and upon the ſame creation; and the lands, tenements, poſſeſſions, hereditaments, offices, or other things whatſoever they be, to him heretofore given and granted by the King's letters patents, act of parliament, or otherwiſe, be from henceforth utterly void and of none effect: Any grants made by the King our ſovereign lord, or any acts of parliament heretofore made of and for the ſame, or any part or parcel thereof, to the contrary in any wiſe notwithſtanding.

Whereby it plainly appeareth, Firſt, that the King, lords ſpiritual and temporal, and the commons of and in the ſaid parliament, expreſſed and declared, that the ſaid prince HENRY was prince of Wales, duke of Cornwall, and earl of Cheſter; and yet was he created but prince of Wales, and earl of Cheſter, and not duke of Cornwall.

Secondly, It is in the ſaid act plainly expreſſed, that the ſaid prince thereby had great and notable poſſeſſions; which muſt of neceſſity be as belonging to the duchy of Cornwall: For although he was created prince of Wales and earl of Cheſter, yet had he no lands or poſſeſſions thereby to him granted.

Fourthly, It appeareth that prince HENRY 27 July, 19 HENRY VII. gave authority by his letters patents in theſe words following. HENRY ſon of the moſt mighty HENRY VII. king of England and France, and lord of Ireland, prince of Wales, duke of Cornwall, and earl of Cheſter, to our truſty and welbeloved ROBERT WILLOUGHBY, lord of Brook, ſteward of our duchy of Cornwall, maſter HUGH OLDHAM, clerk, AMYS POULETT, knight, LEWES POLLARD, ſerjeant at law, JOHN MORE, ROGER HOLLAND, PETER BEVYLL, THOMAS HOBSON, HUGH MOLENEUX, and JAMES ERESEY, greeting. Know ye that we relying much upon your fidelities and circumſpections, have aſſigned you ten, nine, eight, ſeven, ſix, five, four, three, and two of you, (whereof we will have ſome one of you the forenamed ROGER HOLLAND, THOMAS HOBSON, HUGH MOLENEUX, and JAMES ERESEY to be of the *quorum*,) for our commiſſioners and aſſeſſors to aſſeſs, demiſe, and let all and ſingular our poſſeſſions, lands and revenues at this time to be aſſeſſed, and our ſtanneries, quarries, moors, and waſtes in the counties of Devon and Cornwall, being of the duchy of Corn-

wall,

wall, or belonging to that duchy, as alſo thoſe which they that be bondmen, or our tenants in bondage do hold of us, or have held of us, or of our predeceſſors as of the foreſaid duchy, to any perſons whatſoever, that be fit and ſufficient in this kind, for the term of ſeven years; that term to begin at the feaſt of St. MICHAEL the archangel next enſuing: to aſſeſs, demiſe, and let all and ſingular the poſſeſſions, lands, and tenements, and other the premiſſes, even as unto you ten, nine, eight, ſeven, ſix, five, four, three, or two of you, (whereof we will have ſome one of you the forenamed ROGER HOLLAND, THOMAS HOBSON, HUGH MOLENEUX, and JAMES ERESEY, to be of the *quorum*) our ſaid aſſeſſors, ſhall ſeem beſt to be done for our profit and commodity, and according to the cuſtom of demiſing within the ſaid duchy in the like caſe, for ſuch term of years as hath been antiently uſed. And further to ſurvey the reparations, defaults, decays, and waſtes of all and ſingular caſtles, lordſhips, manors, lands, tenements, mills, and all other the premiſſes thereunto belonging, that are to be appropriated to our uſe and commodity, and to do reparations. And further to enquire by the oath of honeſt and lawful men, or by all other ways and means that you beſt can or know, of all and ſingular defaults, exiles, waſtes, damages, huntings, of and in our foreſts, chaces, parks, woods, and underwoods aforeſaid, which do belong unto us, done and committed to our damage and prejudice, and to what value they do particularly extend, and by what men, or what man, ſuch waſtes, ſpoils, huntings, and ſales have been made, at what time, how and by what means. And we do give ſtrait commandment to all and ſingular our officers, miniſters, tenants, and ſervants, that they and every of them be attending, helping, and obedient unto you ten, nine, eight, ſeven, ſix, five, four, three, and two of you in doing and executing all and every of the premiſſes, as is meet. In witneſs whereof we have cauſed theſe our letters to be made patents.

Given under our ſeal at our ſaid moſt mighty lord and father his manor of Greenwich the 27th day of July, in the 19th year of his reign.

Who by vertue of the ſaid commiſſion, granted very many eſtates, and aſſeſſed many fines, which were paid and anſwered to the ſaid prince HENRY, accordingly, as by the miniſters accounts of the date of 20 HEN. VII. appeareth in theſe words.

An aſſeſſment or a renting of all the lands and tenements of HENRY, ſon of the moſt mighty HENRY VII. king of England and France, and lord of Ireland, prince of Wales, duke of Cornwall, and earl of Cheſter, being of his duchy of Cornwall in the counties of Cornwall and Devon, made in the month of October, in the 20th year of the reign of the foreſaid King, by his truſty and well-beloved ROBERT WILLOUGHBY, lord of Brook, ſteward of his duchy of Cornwall, maſter HUGH OLDHAM, clerk, AMYS POULETT, knight, LEWES POLLARD, ſerjeant at law, JOHN MORE, ROGER HOLLAND, PETER BEVYLL, THOMAS HOBSON, HUGH MOLENEUX, and JAMES ERESEY, aſſigned by the letters patents of the ſaid lord the Prince, *&c.*

Fifthly, It appeareth by letters patents granted by king HENRY VIII. dated 15 January, *anno* 7. of his reign, in theſe words: Where we in the time of our being Prince, before the death of our moſt dear father, late King, gave and granted by our letters patents unto our truſty and welbeloved counſellor CHARLES BOOTH, clerk, the room and office of our chancellorſhip, and keeper of our great ſeals unto us belonging at that time, as prince of Wales, and duke of Cornwall, and an annual fee of threeſcore pounds by the year, by name of an annual and accuſtomed fee to the ſame room and office belonging, to be paid at the feaſts of Michaelmas and Eaſter, by even portions out of our duchy of Cornwall, of the iſſues and revenues yearly coming and growing of the ſame duchy, by the hands of our receiver of our duchy, or his deputies for the time being.

Whereof he hath had due payment and allowance during the life of our ſaid father, *&c.* whereby it is apparent that he was duke of Cornwall in the life time of king HENRY VII.

Sixthly, It appeareth by a commiſſion granted by the ſaid prince HENRY, *anno* 22 HEN. VII. in theſe words following: HENRY, ſon of the moſt mighty HENRY VII. king of England and France, and lord of Ireland, prince of Wales, duke of Cornwall, and earl of Cheſter, to our truſty and welbeloved HUGH, by God's permiſſion biſhop of Exeter, ROBERT WILLOUGHBY, lord of Brook, ſteward of our dukedom of Cornwall in the county of Cornwall, PETER BEVYLL, JOHN CHAMOND, HUGH MOLENEUX, JOHN TURNER, JAMES ERESEY, and JOHN WALSH, greeting: Know ye that we relying much upon your fidelitie and circumſpection, do aſſign you eight, ſeven, ſix, five, four, three, and two of you, (whereof we will have ſome one of you the forenamed JOHN CHAMOND, HUGH MOLENEUX, JOHN TURNER, JAMES ERESEY, and JOHN WALSH, to be of the *quorum*) for our commiſſioners and aſſeſſors, to aſſeſs, demiſe, and let, unto any perſons whatſoever, that be fit and ſufficient in this kind, all and ſingular our poſſeſſions, lands, and tenements, that are now to be aſſeſſed, and our ſtaneries, quarries, tolls of tin, moors and waſtes in the counties of Devon and Cornwall, being of the duchy of Cornwall, or belonging to the ſaid duchy, as well thoſe, which in former times have been demiſed to free men, as thoſe which they that be bond men, or our tenants in bondage, do hold of us, or have held of us, or our predeceſſors, as of the foreſaid duchy, for the term of ſeven years, that term to begin at the feaſt of St. MICHAEL, the archangel, next enſuing: To aſſeſs, demiſe, and let, all and ſingular our poſſeſſions, lands and tenements, and other the premiſſes, even as unto you eight, ſeven, ſix, five, four, three, or two of you (whereof we will have ſome one of you the forenamed JOHN CHAMOND, HUGH MOLENEUX, JOHN TURNER, JAMES ERESBY, and JOHN WALSH, to be of the *quorum*) our ſaid aſſeſſors ſhall ſeem beſt to be done for our profit and commodity, and according to the cuſtom of demiſing within the ſaid duchy in the like caſe, for ſuch term of years as hath been antiently uſed. And further to ſurvey the reparations, defaults, decays, and waſtes, of all and ſingular caſtles, lordſhips, manors, lands and tenements, mills, and all other the premiſſes thereunto belonging, which are to be appropriated to our uſe and commodity, and to do reparations. And further to enquire by the oath of honeſt and lawful men, or by any other ways and means that you can, or beſt know, of all and ſingular defaults, exiles, waſtes, damages, huntings, of, and in, our foreſts, chaces, parks, woods, and underwoods aforeſaid, which do belong unto us, done and committed to our damage and prejudice, and to what value they do particularly extend, and by what men or man ſuch ſpoils, waſtes, huntings and ſales have been made, at what time, how and by what means. And we do give ſtrait commandment to all and ſingular our officers, miniſters, tenants and ſervants, that they and every of them be attending, helping, and obedient unto you eight, ſeven, ſix, five, four, three and two of you (whereof we will have ſome one of you the ſaid JOHN CHAMOND, HUGH MOLENEUX, JOHN TURNER, JAMES ERESEY and JOHN WALSH to be of the *quorum*) in doing and executing all and ſingular the premiſſes, as is meet. In witneſs whereof, becauſe we have not our own ſeal at hand, we do therefore procure the privy ſeal of our moſt redoubted lord the king our father, to be put to the aboveſaid preſents.

Given the tenth day of Auguſt, in the year of the reign of our moſt redoubted lord the King our father aforeſaid the twenty ſecond.

By which commiſſion there were then granted five hundred and more eſtates, the fines and rents thereof being anſwered to the ſaid prince HENRY, as by the accounts thereof appeareth, being in theſe words:

An aſſeſſment, or a renting of all the lands and tenements of HENRY, ſon of the moſt mighty HENRY VII. king of England, and France, and lord of Ireland, prince of Wales, duke of Cornwall, and earl of Cheſter, being of his dukedom of Cornwall, within the counties of Cornwall and Devon, made in the month of October, in the 23d year of the reign of the foreſaid King, by his truſty and welbeloved HUGH, by GOD's permiſſion biſhop of Exeter, ROBERT WILLOUGHBY, lord Brook, ſteward of his duchy of Cornwall, PETER BEVILE, JOHN CHAMOND, HUGH MOLENEUX, JOHN TURNER, JAMES ERESEY, and JOHN WALSH, aſſigned by the letters patents of the ſaid lord the Prince: The tenour of which letters patents followeth in theſe words, *&c.*

Out of which two precedents, although ſome captious exceptions might be made and taken to the firſt of them; yet his Majeſty, and the lords of his privy council, conceived the ſecond to be beyond all exception. Yet notwithſtanding was it demanded by the great and judicious counſellor, the lord chancellor of England, whether there were any other matter or precedent after the ſtatute of 11 EDW. III. before the time of king HENRY VII. (the ſaid diſtance of time being long) to expreſs the intent and true meaning of the ſaid ſtatute; for that uſe and practice were ever the beſt expoſitors of the true intent and meaning of ſtatutes. Whereunto was anſwered, That there could not be any precedent directly in that point; for that after the making of that ſtatute, until the reign of king HENRY VII. there had not been any eldeſt ſon of any king of England, that died in the life of the King his father, leaving a ſecond brother then living: And therefore there could not be any precedent of that kind; but yet there was a record of parliament of 5 HENRY IV. that fully and plainly expreſſeth and proveth the true intent and meaning of the ſaid ſtatute of 11 EDW. III. And for that the ſaid record of parliament containeth in itſelf many notable things worthy the obſervation, it is not unfit to ſet down the ſame in *his verbis*, (although it be long, and but ſome part thereof aptly pertinent to the point in queſtion,) which record of parliament is as followeth.

Item, By the common aſſent and will of my thrice-honoured lord the Prince, and of his council on the one part, and by the common conſent and will of maſter JOHN CORNWALL, and of my thrice-honoured lady the counteſs of Huntingdon his wife, and of their council on the other part, in the preſence of the King, and of the lords in parliament, a ſchedule indented and alſo enſealed, of certain matters agreed upon betwixt them, was preferred in the ſame parliament to be inrolled in the parliament roll; the tenour of which ſchedule followeth. It is to be remembred, that the twelfth day of March, an agreement was made, if it be ſo pleaſing to our ſovereign lord the King, between the thrice-noble lord the Prince and JOHN CORNWALL, knight, and ELIZABETH his wife, in ſuch form as followeth; that is to ſay, Foraſmuch as the ſaid ELIZABETH holdeth certain manors, lands and tenements, which the ſaid thrice-noble lord the Prince, claimeth to be annexed to his dukedom of Cornwall; the ſaid JOHN and lady ELIZABETH ſhall come in open parliament, and before our lord the King, they ſhall acknowledge, and the ſaid lady ELIZABETH for herſelf ſhall confeſs, that ſhe holdeth the ſaid manors, lands, and tenements, *&c.* which were and are parcel of the ſaid duchy. Upon which acknowledgment, judgment ſhall be given by our lord the King, and the lords of the ſame parliament, that the ſaid thrice-noble lord the Prince be reſtored to the ſaid manors, lands and tenements, and ſhall have them again quietly to him and to his heirs. And after ſuch judgment ſo given, the ſaid thrice-honoured lord the Prince, ſhall grant all the ſaid manors, lands and tenements, *&c.* to the aforeſaid JOHN and ELIZABETH, to have and to hold for term of the life of the ſaid ELIZABETH, as by the deed indented of the ſaid thrice-honoured lord the Prince ſhall more fully appear. And before that livery of the ſaid deed ſhall be made to the ſaid maſter JOHN and ELIZABETH, an entry upon the ſurrender and judgment aforeſaid ſhall be made by the officers of my

ſaid

ſaid lord the Prince, in ſo ſhort a time, as may conveniently be done. And then preſently after, the foreſaid indenture, with a letter of warrant of an action to deliver ſeiſin, ſhall be delivered on the part of my lord the Prince to the ſaid maſter JOHN and ELIZABETH, of the manors and profits aforeſaid, with their appurtenances, unto the ſaid maſter JOHN and ELIZABETH, or to their attorneys, according to the purport of the ſaid indenture: So as my lord the Prince ſhall take but only attendance and ſeiſin, in the foreſaid manors. And becauſe the ſaid thrice-honoured lord the Prince is within age, ſo that in law his warrant is not effectual, for to give a ſure eſtate to the foreſaid JOHN and ELIZABETH, for the life of ELIZABETH: He ſhall give aſſurance by his faith before our ſaid lord the King, and all the lords of the ſame parliament, that when he comes to his full age, he ſhall make and cauſe to be made to the ſaid JOHN and ELIZABETH, for the life of ELIZABETH, a ſure eſtate againſt himſelf and his heirs, with all his power, of all the ſaid manors, lands and tenements, *&c.* So as if they do commit any waſte thereupon, or upon any parcel thereof, that then they, and every of them, may be impeachable of waſte by my lord the Prince, and his heirs. And alſo that he ſhall maintain the ſaid JOHN and ELIZABETH, in their poſſeſſion of the ſaid manors, lands and tenements, *&c.* with all his power, during the life of the ſaid ELIZABETH. And the like oath ſhall the thrice-honoured lords THOMAS, JOHN and HUMPHREY, his brethren take, if it ſo happen (which GOD defend) that the ſaid duchy do come into their hands. And alſo the ſaid thrice-honoured lord the Prince, ſhall require all the lords being in the ſame parliament, to bear witneſs of the ſame oath. And during the non-age of the ſaid thrice-honoured lord the Prince, the ſaid JOHN and ELIZABETH ſhall not be moleſted nor troubled in their poſſeſſion of the ſaid manors, lands and tenements againſt the form aboveſaid: And all this ſhall be enacted in the parliament, as well the deed of grant of the ſaid thrice-noble lord the Prince, made unto the ſaid JOHN and ELIZABETH, of the ſaid manors, lands and tenements, *&c.* as alſo the ſaid oath made by the ſaid thrice-noble lord the Prince, and his brethren aforeſaid. And after all this performed, the ſaid thrice-honoured lord the Prince, ſhall make livery by vertue of his grant to the ſaid JOHN and ELIZABETH, of all the ſaid manors, lands and tenements, *&c.* comprized within his deed of grant. And the foreſaid JOHN and ELIZABETH after livery made unto them of the ſaid lands and tenements, and livery of the deed of grant of the ſaid thrice-honoured lord the Prince, with a letter of attorney upon the ſame deed, ſhall ſurrender all their patents to the attorney of our ſaid lord the Prince (preſently after livery made by him) which they have of the grant of the ſaid lands and tenements. And hereupon the twentieth day of March then next enſuing, before our ſaid lord the King, in open parliament in preſence of the lords ſpiritual and temporal, came as well my ſaid lord the Prince, as the aforeſaid JOHN CORNWALL, and ELIZABETH his wife, in their proper perſons and acknowledged it: The ſaid ELIZABETH confeſſed and acknowledged before the King, that ſhe did hold for term of the life of her the ſaid ELIZABETH, the ſaid manors, lands and tenements, as parcels of the ſaid duchy. Upon which acknowledgment, judgment was given by our lord the King, and the lords in parliament, that the ſaid thrice-noble lord the Prince ſhould be reſtored to the ſaid manors, lands and tenements, and ſhould quietly rehave them to him and to his heirs. After which judgment given, my ſaid lord the Prince, granted by his faith given in the hand of our lord the King, that preſently after that he ſhould have ſeiſin in the ſaid manors, lands and tenements, and attournment of the tenants in form, as is above declared in the ſaid ſchedule indented, (which ſeiſin and attournment ſhould be taken by the officers of my ſaid lord the Prince, as ſpeedily, as conveniently as might be, without taking any other profit to himſelf) the ſaid lord the Prince would by his deed indented, grant unto the ſaid maſter JOHN and ELIZABETH, for term of the life of the ſaid ELIZABETH, all the ſaid manors, lands and tenements, with their appurtenances whatſoever; the tenor of which deed followeth in theſe words.

HENRY, firſt begotten ſon of the moſt excellent King of England and France, prince of Wales, duke of Aquitaine, Lancaſter and Cornwall, and earl of Cheſter, To all unto whom theſe preſent letters ſhall come, greeting. Know ye that we have given, granted, and by this our preſent writing have confirmed unto JOHN CORNWALL and ELIZABETH his wife, counteſs of Huntingdon, the caſtle and manor of Trematon, the manor of Caleſtock, the manor of Aſhburgh, the caſtle and park of Roſtozmell, the manor of Roſtozmell, the manor of Penlyn, the manor of Penknyth, the boroughs and towns of Leſtwithiell and Camelford, all the fiſhing of the water of Fowey, the manor of Tewynton, the manor of Moresk, and the manor of Tyntagell, to have and to hold all the foreſaid caſtles, manors, parks, boroughs, towns and fiſhings, with the knights fees, and the advowſons of churches, priories, hoſpitals, chantries, chapels, chaces, parks, offices, mills, ſtreams, paſſages, woods, warrens, fiſhings, moors, marſhes, meadows, paſtures, fairs, markets, franchiſes, liberties, cuſtoms, wards, marriages, reliefs, eſcheats, commons, as well of free tenants, as of bondmen, and the reverſions to the ſaid caſtles, manors, parks, boroughs, towns and fiſhings aforeſaid belonging; together with all manner of other profits, commodities, and appurtenances to the ſaid caſtles, manors, boroughs, towns, and fiſhings aforeſaid, belonging or appertaining, to the forenamed JOHN and ELIZABETH, for the term of the life of the ſaid ELIZABETH, without rendring any thing to us, or to our heirs for the ſame. And we the foreſaid Prince and our heirs will warrant and defend for ever, all the foreſaid caſtles, manors, parks, boroughs, towns, and fiſhings, with all their appurtenances as is aforeſaid, unto the fornamed JOHN and ELIZABETH, during the life of the ſaid ELIZABETH. In witneſs whereof theſe our preſent letters are made in manner of an indenture: to the one part whereof remaining in the hands of the foreſaid JOHN and ELIZABETH, we have cauſed our ſeal to be put; and to the other part, which is retained in our hands, the ſeals of the foreſaid JOHN and ELIZABETH are annexed. Theſe being witneſſes, THOMAS, archbiſhop of Canterbury, RICHARD, archbiſhop of York, HENRY, biſhop of Lincoln, chancellor of England, EDWARD, duke of York, JOHN, earl of Somerſet, HENRY Percy, earl of Northumberland, and WILLIAM, lord Roos, treaſurer of England, and others. Given at Weſtminſter the ſixth of April, in the fifth year of the reign of our moſt excellent king and father HENRY, ſince the conqueſt the fourth.

And the ſaid deed being read in the preſence of our ſaid lord the King, and of the lords ſpiritual and temporal aforeſaid, my ſaid lord the Prince, granted that livery of ſeiſin ſhould be made upon the ſame deed to the ſaid JOHN and ELIZABETH, or to their attornies, or attorney, according to the purport of the ſaid deed. And that my ſaid lord the Prince acknowledged and promiſed by his ſaid faith, before our ſaid lord the King, and the lords aforeſaid, that at his full age he would make and cauſe to be made unto the ſaid JOHN and ELIZABETH, for the life of the ſaid ELIZABETH, a ſure eſtate againſt himſelf and his heirs, of all the ſaid manors, lands and tenements; and would maintain them in their poſſeſſion with all his power: And upon this promiſe and oath ſo made by him to perform it, he made requeſt to our ſaid lord the King, and to all the lords ſpiritual and temporal, to bear witneſs of it. And in the ſame manner the thrice-honoured lords THOMAS, JOHN and HUMPHREY, brothers to my ſaid lord the Prince, made ſuch an oath and promiſe in the form aboveſaid. And moreover it was agreed, that after the ſaid livery had by the foreſaid JOHN and ELIZABETH, and the ſaid deed indented ſhewed in the chancery, the ſame deed ſhould be inrolled in the ſaid chancery: which thing was granted by our ſaid lord the King, and the lords aforeſaid. And further our ſaid ſovereign lord the King, of his moſt abundant grace granted in open parliament the ratification and confirmation of the ſaid deed indented, and of the grant made by my ſaid lord the Prince, to the foreſaid JOHN and ELIZABETH, for term of the life of the ſaid ELIZABETH, in the form aforeſaid.

Whereby

Whereby it is plainly expreſſed, that the King, and the lords ſpiritual and temporal, did then conceive and were of opinion, that if the then prince HENRY, duke of Cornwall ſhould die, then THOMAS, JOHN and HUMPHREY, his younger brothers, ſhould in their ſeveral turns be dukes of Cornwall; and yet were they not, nor could be *filii primogeniti nati*, but *exiſtentes*. The words in the ſaid record expreſſing the King's and lords opinion to be ſo, are in two parts: Firſt, in that the words are, And the like oath ſhall the thrice-honoured lords THOMAS, JOHN and HUMPHREY his brethren take, if it ſo happen (which GOD forbid) that the ſaid dukedom do ever come into their hands, *&c.* Whereby it is plainly and fully expreſſed, that if the then prince HENRY, duke of Cornwall, ſhould die, then it was conceived, that the three younger brethren, in their ſeveral turns, were to be dukes of Cornwall.

Secondly, In that the ſaid THOMAS, JOHN and HUMPHREY, did take their oaths before the King in full parliament, that if prince HENRY ſhould die, then they would perform his agreement made with the ſaid counteſs, as in the record is contained; which they could not do, but as dukes of Cornwall.

3. Laſtly, as to the point to prove what is the true ſenſe and meaning of the words in the ſaid ſtatute contained, being *filius primogenitus*, or *filii primogeniti*, by ſtatutes and precedents both before the ſaid ſtatute of 11 EDW. III. and ſince.

1. For the true expoſition of the words (*filius primogenitus*) the ſtatutes and precedents before the ſtatute of 11 EDW. III. are many.

Firſt, The ſtatute of Malbridge, which was made to provide a remedy againſt thoſe, who were wont to infeoff their firſt begotten, and their heirs being within age of their inheritance, *&c.* There, although the words in that ſtatute be (firſt begotten) yet hath it been ever ſince conſtrued and practiſed, that if feoffments be made to ſecond ſons (being heirs after the death of their elder brothers) it is within the ſenſe, purview, or remedy of that ſtatute.

Secondly, It likewiſe appeareth in the writ of aid in FITZHERBERT, which followeth in theſe words: The King to the ſheriff, *&c.* We command you that, *&c.* you cauſe to be had a reaſonable aid of the knights and his free tenants in your bailywick, to make his firſt begotten ſon knight, or to marry his firſt begotten daughter, according to the form of the ſtatute, by the common council of our kingdom of England therein provided. And yet if the firſt ſon die, the ſecond ſon being heir to his father ſhall have that aid; and yet the words are (firſt begotten ſon and heir:) And ſo, if the eldeſt daughter die, a ſecond then living, the father ſhall have aid to marry her, and yet ſhe is not the firſt begotten daughter: Which by theſe and many other acts of parliament, and precedents hath been ever conſtrued and practiſed to be the firſt begotten ſon, or firſt begotten daughter being, and not firſt begotten ſon born, or firſt begotten daughter born only.

2. Secondly, to prove what is and hath been conceived to be the ſenſe and true meaning of the words *filius primogenitus* in the ſaid ſtatute of 11 EDW. III. contained; it is declared, expreſſed, and approved by divers ſubſequent ſtatutes, as,

Firſt, by a ſtatute made 2^do^ *Maii, anno regni* HEN. V. 9^no^ in theſe words following. It is to be made known, that whereas at the parliament holden at Weſtminſter the monday next after the feaſt of St. MATTHIAS the apoſtle, in the year of the reign of king EDW. III. after the conqueſt, the eleventh, amongſt other things it was agreed, That the eldeſt ſons of the Kings of England, that is to ſay, they that ſhould be next heirs to the realm of England, ſhould be dukes of Cornwall; and that the county of Cornwall ſhould for ever remain as a duchy to the eldeſt ſons of the Kings of England, that ſhould be next heirs of the ſaid realm, without being given elſewhere: And that thereupon the ſaid king EDWARD by his charter the ſeventeenth day of March then next enſuing, with the common aſ-

ſent and counſel of the prelates, earls, barons, and others of his council being in his ſaid parliament, gave unto EDWARD, his eldeſt ſon, then earl of Cheſter, the name and honour of duke of Cornwall, and made him duke of Cornwall, and girded him with a ſword: And to take away doubts for the time to come, what things, and how much the foreſaid duke, and other dukes of the ſame place, (who for the time ſhould have the name of the ſaid duchy) ought to have, he did expreſs in certain by the ſaid charter, all things in ſpecial which he would have to belong to the ſaid duchy. And thereupon the ſame King, by his ſaid charter, gave and granted for him, and for his heirs, unto his ſaid ſon, under the name and honour of duke of the ſaid place, divers caſtles, manors, lands, tenements, and other poſſeſſions. Amongſt which the ſaid King granted, that the manor of Iſleworth, with the appurtenances in the county of Middleſex, which PHILIPPA, then Queen of England, held for term of her life, and which, after the death of the ſaid Queen, ought to return to the ſaid King and his heirs, after the deceaſe of the ſaid Queen, the ſaid manor of Iſleworth with the appurtenances ſhould remain to the ſaid duke, and to the eldeſt ſons of him and of his heirs kings of England, and dukes of the place aforeſaid, and that were inheritably to ſucceed in the kingdom of England. All which caſtles, manors, lands, tenements, and other poſſeſſions, with the knights fees, and advowſons of churches, abbeys, priories, hoſpitals and chapels, and with the hundreds, wapentakes, fiſhings, foreſts, chaces, parks, woods, warrens, fairs, markets, liberties, and free cuſtoms, wards, reliefs, eſcheats, and ſervices of tenants, as well free as bondmen; and all other things to the ſaid caſtles, manors, lands, tenements, and other poſſeſſions aforeſaid in any manner belonging or appertaining, the foreſaid King did by his ſaid charter for himſelf and for his heirs, annex and unite to the ſaid duchy for ever thereunto to remain, ſo as from the ſaid duchy they might at no time after be in any wiſe ſevered, nor might be in no ſort given nor granted to any perſons, but to the dukes of the ſaid place, by the ſaid king EDWARD, nor his heirs. Nevertheleſs, the King our ſovereign lord doth now grant and ordain in this preſent parliament, with the aſſent of all the lords ſpiritual and temporal, and of the commons in the ſame parliament aſſembled, that the ſaid manor of Iſleworth, with the knights fees, and advowſons of churches, chanteries, and chapels, and with the hundreds, wapentakes, fiſhings, foreſts, chaces, parks, woods, warrens, fairs, markets, liberties, and free cuſtoms, wards, reliefs, eſcheats, and ſervices of tenants, as well free as bondmen, ſtreams, waters, and all other things to the ſaid manor of Iſleworth, in any ſort belonging or appertaining, be by the authority of this parliament ſevered, diſannexed, and diſunited from the ſaid duchy of Cornwall for ever. And further our ſaid ſovereign Lord, by the authority of the ſame parliament, doth give, grant, and aſſign the ſaid manor of Iſleworth, with the knights fees, and advowſons of churches, chantries, and chapels, and with the hundreds, wapentakes, fiſhings, foreſts, chaces, parks, woods, warrens, fairs, markets, liberties and free cuſtoms, wards, reliefs, eſcheats, and ſervices of tenants, as well free as bondmen, ſtreams, waters, and all other things to the ſaid manor of Iſleworth, in any ſort belonging or appertaining, to the abbeſs and convent of the monaſtery of St. SAVIOUR, and St. MARY the virgin, and St. BRIDGET of Sion, of the order of St. AUSTIN, called St. SAVIOURS, by our ſaid ſovereign lord in Iſleworth in the county of Middleſex, newly founded. To have and to hold to the ſaid abbeſs and convent, and their ſucceſſors, in pure and perpetual alms, with a ſufficient clauſe of warranty to be made by our ſaid ſovereign Lord, for himſelf and his heirs, to the ſaid abbeſs and convent, and their ſucceſſors for ever, *&c.*

Out of which act of parliament, being the firſt and neareſt the time of the making of the ſaid ſtatute of 11 EDW. III. two things are effectually to be obſerved.

Firſt, in that it reciteth the ſtatute of 11 EDW. III. to be, that by that ſtatute it was agreed, that the eldeſt ſons of the King's of England, that is to ſay, they which ſhould be next heirs to the realm of England, ſhould be dukes of Cornwall,

wall, and that the county of Cornwall ſhould for ever remain as a duchy to eldeſt ſons of the Kings of England, who ſhould be next heirs of the ſaid realm, without being beſtowed elſewhere.

Secondly, in that it expreſſeth, that, Thereupon the ſaid king EDWARD by his charter the ſeventeenth day of March then next enſuing, with the common aſſent and counſel of the prelates, earls, barons, and others of his council being in his ſaid parliament, gave to EDWARD, his eldeſt ſon, the ſaid duchy of Cornwall, *&c.* And among other caſtles, manors, *&c.* granted, That the manor of Iſleworth in the county of Middleſex ſhould remain to the duke, and to the eldeſt ſons of the duke, and of his heirs Kings of England, *&c.*

In the recital of both which ſtatutes (for ſo the laſt was as well as the firſt, as by the report of the late Prince his caſe it appeareth) there be no words (of firſt begotten ſon) uſed; which plainly and fully proveth, that the ſaid parliament then made no difference of conſtruction between the words (firſt begotten ſon) and the words (the eldeſt ſons of the Kings of England, that is to ſay, thoſe that ſhould be next heirs to the realm of England.)

Secondly, it is expreſſed in a record, in the remembrances of the Exchequer of the thirtieth year of the late king HENRY VIII. *viz.* amongſt the records of the term of the Holy Trinity, the 14 roll in the Exchequer, remaining on the part of the remembrancer of the treaſurer is contained, amongſt other things, as followeth. That one EDMOND, in times paſt earl of Cornwall, was ſeized of the foreſaid county of Cornwall, and of the knights fees and other fees to the ſaid county belonging, in his demeſne as of fee and right: And being thereof ſo ſeized of ſuch an eſtate, died ſeized thereof; after whoſe death, the foreſaid county of Cornwall, and the knights fees, and the other fees to the ſame county belonging, did deſcend unto lord EDWARD, in times paſt King of England the firſt, as being kinſman and heir to the foreſaid EDMUND, late earl of Cornwall, that is to ſay, ſon of the lord HENRY, late King of England the third, ſon of king JOHN, father of RICHARD, father of the foreſaid EDMUND: By virtue whereof the ſame late king EDWARD I. was ſeized of and in the foreſaid county, and other the premiſſes, with all his appurtenances in his demeſne as of fee. And he thereof ſo ſeized of ſuch an eſtate, died thereof ſeized. After whoſe death the ſaid county, and other the premiſſes, with all their appurtenances unto the ſame county belonging, did deſcend unto lord EDWARD, late King of England the ſecond, as ſon and heir of the foreſaid late king EDWARD I. By virtue whereof the ſame late king EDWARD II. was thereof ſeized in his demeſne as of fee: And he thereof ſo ſeized of ſuch an eſtate, died thereof ſeized: After whoſe death, the foreſaid county of Cornwall, and other the premiſſes with all their appurtenances unto the ſaid county belonging, did deſcend unto lord EDWARD, late King of England the third, as ſon and heir of the ſaid late king EDWARD II. By virtue whereof the ſame late king EDWARD III. was thereof ſeized in his demeſne as of fee: And he being thereof ſo ſeized, at his parliament holden in the eleventh year of his reign, amongſt other things it was ordained and enacted: That the ſaid county of Cornwall ſhould for ever remain as a duchy to the eldeſt ſon of the Kings of England, which ſhould be next heir to the kingdom, without any form of gift, as in the ſame act is more fully contained. And afterward the foreſaid late king EDWARD III. by his letters patents dated the third day of January, in the eleventh year of his reign, and inrolled in the remembrances of the Exchequer in the forty ſecond year of the ſaid late king EDWARD III. *viz.* amongſt the records of the term of St. MICHAEL, the 15 roll on the part of the remembrancer of the treaſurer, reciting by the ſame, That whereas he lately intending to honour the perſon of the beloved and loyal, his the late king EDWARD's firſt begotten ſon, then earl of Cheſter, gave unto the ſame his ſon the name and honour of duke of Cornwall, and advanced him to be duke of

of Cornwall, and girded him with a ſword, as was meet: And gave and granted unto his foreſaid ſon for the continuing of the ſtate and honour of duke of Cornwall, according to the nobility of his birth, and for the more eaſy ſupporting of the burdens which lie ſo much upon him, for himſelf the late King and his heirs, unto his foreſaid ſon, the ſhrievalty of Cornwall, *&c.* To have and to hold to the ſaid duke, and to his and his heirs the kings of England their firſt begotten ſons and dukes of the ſaid place, that were hereditarily to ſucceed in the kingdom of England, together with the knights fees, and the advowſons of churches, and all other things, to the caſtles, boroughs, towns, manors and honours aforeſaid, in what manner ſoever belonging of the ſaid late King, and his heirs for ever: As in the patent of the ſaid late King to the foreſaid then duke thereof made, is more fully contained.

In the recital of the firſt of which ſtatutes, it is ſaid that it was thereby enacted, That the ſaid county of Cornwall ſhould for ever remain as a duchy to the eldeſt ſon of the Kings of England, which ſhould be next heir to the kingdom: And therein ſpeaketh not of *filius primogenitus*, or *filii primogeniti*, or *filiis primogenitis*.

In the ſecond of which ſtatutes made in the ſame parliament, that the firſt was (which was only made to avoid future doubts and queſtions, what did or ſhould belong unto the ſaid duchy of Cornwall, as it appeareth by the ſtatute of 9 HENRY V, before expreſſed:) although the words be there in the *habendum*, To the ſame duke, and to his, and his heirs the kings of England their firſt begotten ſons and dukes of the ſaid place, that were hereditarily to ſucceed in the kingdom of England, *&c.* yet the ſenſe of the ſaid words (*filiis primogenitis*) or firſt begotten ſons, is expounded and explained by the words of the firſt ſtatute, being to the eldeſt ſon of the Kings of England, which ſhould be next heir to the kingdom: Otherwiſe thoſe two ſtatutes made to one end and purpoſe, and in one and the ſelf ſame parliament, could not ſtand together, nor effect the end for which they were both made.

Thirdly and laſtly, it appeareth by an act of parliament made *anno* 31 HENRY VIII. reciting, That whereas in the parliament holden in the eleventh year of the reign of the late King of famous memory king EDWARD III. it was amongſt other things eſtabliſhed, enacted and ordained, that the eldeſt ſon of the King of England, which ſhould be inheritable to this realm of England, ſhould be duke of Cornwall, and that the ſame duchy of Cornwall ſhould always be to the eldeſt ſon of the Kings of England, which ſhould be next heir unto the ſaid realm, and that he ſhould have and enjoy towards the maintenance and ſupportation of his princely eſtate, all the whole and entire dukedom of Cornwall, and all caſtles, honours, *&c.* to the ſame belonging.

By or in which recital of the ſaid ſtatute of 31 HENRY VIII. no mention is made that *filius primogenitus*, or firſt begotten ſon, (which is the Engliſh word) ſhould be duke of Cornwall, but that the eldeſt ſon of the King of England, which ſhould be inheritable to this realm of England, ſhould be duke of Cornwall.

There is alſo contained in the ſaid act of parliament, a (ſaving) to all perſons their rights, other than to the then prince EDWARD, and every other which ſhould then after happen to be the King's eldeſt ſon, and next heir unto the crown of England, but therein ſaveth nothing to the *filiis primogenitis*, or firſt begotten ſons of the King, nor uſeth the words.

There is alſo in that ſtatute a recompence given in lieu and ſatisfaction of the ſaid honour of Wallingford, in theſe words: And further be it enacted, that the ſaid excellent and undoubted lord prince EDWARD, and every other, which ſhall hereafter happen to be the King's eldeſt ſon, and next heir unto the crown

of this realm, ſhall have, hold, and enjoy for ever annexed, united, and knit to the ſaid dukedom, *&c.* But therein giveth no recompence to prince EDWARD, and *filiis primogenitis*, or firſt begotten ſons of the Kings of England; which they would have done, if the parliament had conceived that the words (*filius primogenitus*) and (eldeſt ſon of the King) had not had one and the ſelf ſame ſenſe and ſignification.

UPON due conſideration had of all which precedents, acts of parliament, and other the before recited reaſons and proofs, his moſt excellent Majeſty, by the advice of the lords, and others of his Highneſs's privy council, clearly and abſolutely reſolved, That the high and noble prince CHARLES, now his eldeſt ſon, was in right, and by virtue of the ſaid ſtatute of 11 EDW. III. ought to be duke of Cornwall. And upon that reſolution, his Majeſty commanded that his Highneſs ſaid ſon prince CHARLES, ſhould have and enjoy the honour, ſtile, and dignity of duke of Cornwall, which he preſently had, and enjoyed accordingly.

And to the end (the cauſe being of ſo great conſequence) that the reaſons that moved his Majeſty's ſaid reſolution ſhould be publickly known to all, that thereby all preſent doubts in this caſe might be avoided, and future queſtions in ſucceeding times likewiſe prevented, his Highneſs out of his princely prudence, commanded both the ſtate of the ſaid queſtion, and his ſaid reſolution thereupon, together with the reaſons that moved his Majeſty thereunto, to be particularly and fully expreſſed in writing, and to be manifeſted to all by printing the ſame: That ſo all men might be therein ſatisfied; which otherwiſe certainly might miſtake, or at leaſt ſtand in doubt, becauſe the records, that give ſatisfaction in this caſe, are not in every man's hands; neither have men (otherwiſe greatly learned in the laws of this realm) cauſe to ſearch curiouſly into them: But the late doleful accident of the death of the noble and memorable prince HENRY, enforced this neceſſary travel with all care and obſervation, which hath brought this point, otherwiſe obſcure, ſo clearly to light.

Barony of *ROOS.*

The Claim to the Barony of *ROOS.*

To the King's moſt excellent Majeſtie.

Your Highneſs moſt humble and loyal ſubject FRANCIS, earl of Rutland, lord Roos of Hamblack, Tresboot and Belvoir,

E Coll. Greg. King, Lanc. Herald.

SHEWETH, That whereas the name, ſtile and dignity of lord Roos of Hamblack, Tresboot and Belvoir, is the true right and inheritance of me your Higneſs ſubject, belonging and appertaining to me and to none other, as being lineally deſcended, and the right heir male of THOMAS, being lord Roos of Hamblack, Tresboot and Belvoir, was by King HENRY the eight in the ſeventeenth year of his Highneſs reign, created earl of Rutland, to hold the ſame with all honours, preheminencies and elſe whatſoever to ſuch eſtate belonging, to him and the heirs males of his body; whereby the ſaid dignity of lord Roos became inſeparably knit to the ſaid earldom, and ſo was to deſcend in courſe therewith, as by the creation may appear, by what right and title I hold my place as baron in your Majeſties high court of parliament.

Now ſo it is moſt mighty Sovereign, that ſome have laboured to entitle the ſon of the lord Burghley unto the ſaid dignity of lord Roos, not ſparing ſo to call him, ſo to write him, and ſo to put him to take the place and creſt of that dignity, pretending him to be the right heir thereto, becauſe he is deſcended of the ſole daughter of EDWARD, late earl of Rutland, who dyed without heir male of his body.

Hereby a manifeſt wrong is offered to me your Highneſs ſubject, for which I have no remedy but to appeal to your moſt excellent Majeſtie, in whom only is the power to determine thereof.

My moſt humble ſuit is therefore, that your Majeſtie will be pleaſed to refer to your Highneſs commiſſioners deſigned in the office of earl marſhall and arms, the conſideration and examination of this title, to the end your Majeſty may be truly informed of my right, and ſo in your princely wiſdom determine thereof accordingly. And that in the mean time your Highneſs will pleaſe not to permit this pretended claim, by ſuffering him the creſt, name, ſtile, title and place of that dignity.

And I your Majeſtie's loyal ſubject (as bounden) ſhall daily pray for your perpetual and happy reign over us.

The ſtate of the claim of FRANCIS, earl of Rutland, to the title and dignity of the lord Roos of Hamblack, Tresboot and Belvoir, being heir male to THOMAS, late earl of Rutland, againſt WILLIAM CECIL the ſon of the lord Burghley, claiming it as heir general to the ſaid earl THOMAS.

SIR WALTER ESPEAKE lord of Hamblack alias Helmeſley, who dyed 1153, about 18 K. STEPH. beſtowed his ſiſter ADDELINE in marriage with PETER DE ROOS, to whom he gave the manor, caſtle, and honour of Hamblack, and ſo he became lord Roos of Hamblack.

EVERARD Roos, the granchild of PETER Roos, married ROSE, the heir of Tresboot, and ſo came in alſo to their honour, and manor, and caſtle of Wraggby; alſo he became lord of Tresboot.

His ſon ROBERT, that married ISABEL, a daughter to a King of Scots, was entituled lord Roos of Hamblack in the time of King HENRY II.

This dignity continued till *primo* EDW. IV. in that line and in the heir male, at what time THOMAS, then lord Roos of Hamblack was then attainted for adhering to the part of King HEN. VI. and ſo all fell to the crown, and the King gained it.

Till this attainder, they were ſucceſſively ſummon'd to the parliaments in the reigns of the ſeveral Kings from 49. H. III.

In 1 HEN. VII. EDMUND, the ſon of the ſaid THOMAS, was reſtored by act of parliament, and dyed without iſſue, leaving two ſiſters, ELEANOR, married to Sir ROBERT MANNERS, and ISABELL, who died without iſſue, yet married to Sir ROBERT LOVELL.

Sir GEORGE MANNERS, ſon to Sir ROBERT and ELEANOR, was lord Roos *jure matris*, and ſo ſummon'd to parliament. He left THOMAS lord Roos of Hamblack, who was created earl of Rutland 17 H. VIII. to hold to him and the heirs males of his body.

So this dignity hath run in the heir male from the match of PETER de Roos with ESPEACK, until the match of Roos with MANNERS, and in that name hath continued till now.

By the creation of THOMAS, lord Roos, into the earldom of Rutland, *ſibi & hæredibus maſculis*, the ſaid barony of Roos is taken to be inſeparably knit to the ſaid earldom, and ſo to deſcend therewith.

By the cuſtom and laws of arms in England, the elder ſon of an earl hath been and is to this day a baron and called lord, and hath his precedency before all barons, whereby appeareth that a baron is ſubaltern to an earldom; and if the eldeſt ſon be not a baron after that cuſtom, the earldom doth not ſubſiſt, but lacketh a chief branch of his honour; neither can that ſon have precedence of a baron.

It were ſtrange that the dignity being thus coupled in one blood ſhould now be ſevered; for it is not enough to ſay, becauſe the barony came to MANNERS by a woman, it ſhould now, for all this coupling go to a woman again from MANNERS, and ſo be carried from the earldom, ſo long as there is an heir male in being; whereof they can produce no example.

But it may be proved, that the heir male in the collateral line to an earldom inveſted with a barony gotten by a woman hath carried earldom and barony together, though there were a daughter and heir of the elder brother.

Again, the caſtle of Hamblack being *caput baroniæ* is entailed upon the heir male, and where the lands go, the dignity is ſo provided often.

The ſtate of the cauſe is therefore thus,

A barony, though gotten into a blood by a woman, continued in the ſame blood and heirs male of the ſame blood until the poſſeſſor of that barony was created earl, to hold to him and to the heirs male of his body the ſame earldom with all honours and preheminencies to ſuch an eſtate of an earl belonging, hath not at any time been ſevered from the earldom for want of an heir male in the right line, or been carried away by a daughter of that right line, but always the collateral heir male, if there were any heir male of the blood in being.

The acceptation of an earldom by a baron, with ſuch reſtraint of deſcent to the heir male of his body, though the baron were before in fee ſimple in nature and being by writ, is in ſubſtance and law a ſurrender of the barony inveſted in him before, and both the old and new dignity are ſettled together and reſtrain'd into one courſe of deſcent, that is, into a ſtate tail, to paſs with their earldom, which being the greater, carrieth the leſſer with it ever.

The honour, manor, and caſtle of Hamblack alias Helmeſley, is held *per ſervitium militare*, viz. *unius baroniæ integræ*; that title hath been from the firſt lord Roos of Hamblack, and Hamblack is entailed upon the heirs males and no other; but he that hath had Hamblack was ever called lord Roos of Hamblack.

So

So is Wraggby held *per ſervitium militare*, viz. *unius baroniæ integræ*, and both entailed upon the ſaid heir male to the earldom.

The ſtate of the queſtion.

Whether the title of a barony brought into a family, which afterwards is inveſted with an earldom *hæredibus maſculis*, be ſo inſeparably annexed to the heirs males that it cannot be ſevered from them, and be transferred by an heir general into another family?

This inſeparable annexation is, as it ſeemeth, grounded, either
Upon ſome inherent preeminency in the degree of an earle.
Or upon the patent.
Or upon precedents of former ages.
Or ſome important conſequence of ſupporting the honourable ſtate of an earl.

If ſuch an inherent preeminency, retentive faculty, and inſeparability of titles, had been known in former ages, it would in all probability have been practiſed by ſovereign Kings and great Princes, and ſuch titles would have continued inſeparably annexed to their crowns and kingdoms.

So the title of Navarre, brought to the crown of France by an heir general married to Philip the Fair, and incorporated in his ſon King LEWIS HUTIN, had not been transferred by his heir general to the family of Evreux, but had continued in his two brethren ſucceeding him.

So the ſaid kingdom of Navarre had not been transferred at length to the houſe of Arragon, and from them to the houſe of Foix by an heir general, and from them likewiſe to the houſe of Albreth, without any reſpect to the duke of Nemours the next collateral heir male, and ſo conſequently by the heir general of Albreth, to the houſe of Bourbon, and the preſent King of France.

The like may be ſaid of the county of Flanders, and dutchies of Burgundy, Lorrain and Britaine. And had the dutchy of Britaine been once inſeparably adjoyn'd to the crown of France by an heir general, the French King's fearing a ſeparation would never ſo carefully have procured a perpetual union thereof to their crown.

Hereby it appeareth, that it cannot hold, which ſome lawyers of France have averred, that whatſoever once accrueth to the flowers de liz, that is to the crown of France, cannot be ſever'd from the ſame: and if it cannot hold in ſuch a potent kingdom, in all probability it cannot hold in an earldom of England.

Neither can this inſeparability be grounded upon the patent, for thereby THOMAS lord Roos was created only earl of Rutland *ex gratia ſpeciali*, with *habendum & tenendum, gradum, dignitatem, ſtilum, titulum, nomen comitis Rutlandiæ*, without any annexation of the title of Roos of Hamblack, Tresboot and Belvoir; and as I take it the learned in the law do hold, that no dignity can be transferred without patent and expreſs words; ſo that the general words in the patent *cum omnibus & ſingulis præeminentiis & honoribus* cannot carry away the title of dignity, but concern his coronet, robes of eſtate, cloth of eſtate, *&c.*

To find precedents fitting the preſent queſtion will be as hard as it was for the French when they would have excluded King EDWARD III. of his right in France by his mother, upon a pretended cuſtom which they afterwards called the ſalique law.

In the precedents to be produced, theſe limitations are to be required.

Firſt, that a baron is ſummon'd in regard of an heir general.

Secondly, that the ſaid baron, or deſcendant of that baron, is created earl *ſibi & hæredibus maſculis.*

Thirdly, that there hath been a ſole daughter and heir general in the right line of the earl ſo created.

Fourthly, that the ſon of the heir general have ſufficient ſupportation, made his claim, and that judgment hath been twice given againſt him.

These may seem the important consequences and inconveniencies, that the title of the barony should not be separated.

FIRST, that it is an ancient custom of England and necessary that the honour of an earl should be accompanied with the title of a barony; and that an earldom cannot subsist without it.

Secondly, that the son and heir of an earl should not have the name and title of a lord.

Thirdly, that the said son and heir should consequently lose his precedence before a baron.

For the first, it is no antient custom, nor necessary, that the title of an earl should be accompanied with the title of a barony. For the first earls in the Conqueror's time, as appeareth by Domesday book, are simply called *comes Hugo, comes Rogerus, comes Gulielmus*: afterward the single name of the county was added, as *comes Cestriæ, comes Oxoniæ*, or of two counties when he had obtained another by hereditary right of succession, as earl of Hereford and Essex, earl of Glouceſter and Hertford; yea the elder son of the King had no title of baron, but was stiled only *primogenitus filius regis Angliæ*, until King EDWARD the third conferred the title of duke of Cornwall upon the first born sons of the King.

The first that added more titles in his stile was WILLIAM of Valence, earl of Pembroke lord of Weishford and Montiniac, whereof he was proprietary lord; and afterwards others imitating him, some added in their stile the names of their baronies, and some their principal manours and lordships.

Had a barony been so necessary requisite to earls and dukes, neither Kings would have created them, nor they accepted such high honours without the title of baronies: but it appeareth by publick instruments under their hands and seals, that PIERCE GAVESTON, earl of Cornwall, EDMUND of Langley, earl of Cambridge, THOMAS HOLLAND, earl of Kent, THOMAS of Woodstock, earl of Buckingham, THOMAS, duke of Clarence, JOHN, duke of Bedford, HUMFRY, duke of Glouceſter, JOHN BEAUFORD, duke of Somerset, GEORGE, duke of Clarence, RICHARD, duke of Glouceſter, CHARLES BRANDON, duke of Suffolk, HENRY FITZ-ROY, duke of Richmond and Somerset, had no titles of baronies annexed to their dukedoms and earldoms.

Yet no man doubteth but every one of these were lawful barons implicative, though not in name; when as the greater dignity carrieth the lesser: they were summoned in parliaments and had place and voice therein, and all dukes, marquesses, earls, viscounts and barons of England, have been, and are, comprized under the name of the baronage of England.

For the second, verily it is a laudable custom that the son and heir apparent of an earl should have the title of lord; this proceeded from the natural affection of the father to his child, who, when as he is a coessential part of him, vouchsafed to participate his honour with him, and to make him as the French call it *a conseigneur*, according to that of the poet

Justa quidem series patribus succedere natos
Esse simul dominos justior ordo piis.

Hereupon the sons and heirs of such earls as had baronies were called lords, and denominated of their fathers baronies; and the sons of such as had none were called barely lords, as the lord WILLIAM, the lord THOMAS; as the son of CHARLES BRANDON, duke of Suffolk, was simply called the lord HENRY BRANDON, until HENRY VIII. created him earl of Lincoln: and these were but lords in reputation, courtesy and courtship, not legally and really until the King had created them or summoned them to Parliament.

For the third, the ſon and heir of an earl cannot loſe his precedency for want of the title of a barony, when, as precedency is grounded not upon the title of baronies, but upon the nobility inveſted in their parents blood, and their *propinqua potentia* to ſucceed in their fathers honours.

For the lord Roos it may be ſaid,

Now when it appeareth that the obſtacle objected by the annexation of the barony of Roos to the earldom of Rutland, cannot divert the lineal courſe of ſucceſſion, which would otherwiſe have been currant, he preſented his humble petition for grace to his gracious Majeſtie, acknowledging his will and pleaſure to be the true fountain from whence all honours are derived. He will not for his lawful ſucceſſion urge the law of GOD, xxvii Numbers, *If a man dye and have no ſon, then ye ſhall turn his inheritance to his daughter*; nor the civil law, whereby ſucceſſion is carried by courſe of blood, and *principatus a fœminis inductus legitime ad fœminas hereditarias revolvitur*; he doth not inſiſt upon the cuſtom of England, which doth wholly favour the heir general, and their iſſue, not only in titles of honour, but alſo in the higheſt offices, holding that the call by writ is an ennobling of the blood, and deriveth nobility as the blood is derived, whereof there is plenty of examples in the nobility of England. Only he may think as the moſt learned lawyer ſaid in like caſe, not long ſince, that there is *ſcintilla juris*, a ſparkle of right in him, which, as he hopeth, his Majeſty will kindle to a greater light and luſtre; and the rather,

Firſt, For that he is poſſeſſed as proprietary and lord of the manour of Roos, from whence, as from his capital ſeat, ROBERT DE ROOS had both his ſurname and title of baronie in the firſt ſummons, 49 HEN. III. as the lords of Clifford, Stafford, Berkeley, Cobham, Aſtley, and others had.

Secondly, For that EDWARD, earl of Rutland, his grandfather, a nobleman very learned in points of honour, aſſigned that land to his daughter, to aſſure the title to their iſſue.

Thirdly, For that the lord BURGHLEY, lord treaſurer, the lord admiral, the lord HUNSDON, commiſſioners for the office of earl marſhal, ordered, as we are informed, that at the funeral of the lady Roos, her ſon being then an infant, ſhould be there preſent, and be publiſhed by Garter king of arms to be lord Roos, which was done accordingly, and was a manifeſt overture of their judgment in this caſe.

Fourthly, That the late Queen, of moſt happy memory, accepted him as lord Roos, and that by that name he is entred in record.

Fifthly, That his Majeſty hath likewiſe accepted him, and by that name imployed him in miſſive letters to the Emperor and other Princes.

And here incidently give me leave to recall to your memory, That HUGH COURTNEY was created earl of Devonſhire by a letter miſſive to himſelf, and another to the ſheriff of the ſhire; and that the name and precedence of a lord hath been enjoyed upon no other ground, but that the Sovereign ſo called him once.

Precedents for my lord Roos.

THAT GILBERT MARSHALL, ſo called becauſe he was marſhall of king HENRY I. his houſe, to him and his heirs, and whoſe poſterity were called marſhals of England, was a baron is held for certainty.

His ſon JOHN is a witneſs among the barons in a recognition of the liberties, *anno* 10 HEN. II. and GILBERT his ſon ſucceeded him.

WILLIAM MARSHALL, his ſon, was created earl of Pembroke: his five ſons ſucceeded him both in that office and the earldom, but they all dyed without iſſue, leaving their ſiſters their heirs.

The earldom of Pembroke was beſtowed on WILLIAM DE VALENCE, deſcended from the ſecond ſiſter, but the office of the marſhall was ſevered from

the ſame, and aſſigned to the eldeſt ſiſter, and by her came to the BIGODS, earls of Norfolk.

If ſo high an office inveſted in an earldom, might be ſevered from that earldom, why ſhould a barony be judged inſeparable from the earldom whereunto it was annexed.

The title of lord Rochford was inveſted in the earldom of Ormond, when, as appeareth by wills, and the regiſter of patronages in the dioceſs of London, the right line male failed, that title deſcended by an heir general to THOMAS BOLLEN, whoſe mother was one of the two coheirs, and he received the ſaid title from king HENRY VIII. in regard of his mother: His ſon GEORGE was called to parliament by the name of Rochford, and had place before the lord Morley, which proveth the antiquity of the lord of Rochford. Afterwards when the family of BOLLEN was dejected, ſir PIERCE BUTLER, next heir male to the ſaid earl of Ormond, enjoyed the title of Ormond; but neither he nor his ſucceſſors aſſumed the title of Rochford; ſo that they did not think a title once annexed to an earldom to be inſeparably united thereunto.

The title of lord Lovain deſcended by an heir general to ſir WILLIAM BOURCHIER; he was by king HENRY V. made earl of Ewe, and by that name ſummoned to parliament. His ſon was created earl of Eſſex, *ſibi & heredibus maſculis*: The iſſue male failed in HENRY, his grandchild, who left one only daughter ANNE, who enjoyed the titles of Lovain and Ewe, during her life; and after her death the ſame titles came to WALTER DEVEREUX, earl of Eſſex, deſcended from CECILIA, ſiſter to HENRY BOURCHIER, earl of Eſſex, and reverted not to the earl of Bath the next heir male in the collateral line.

The title of Abergavenny accrewed to JOHN HASTINGS, by his mother; one of the coheirs of CANTELUPE; he had JOHN, lord Abergavenny; his ſon LAURENCE was created earl of Pembroke; when his iſſue failed in the right line, the ſaid title did not deſcend to the houſe of HASTINGS of Fenwick, who were the heirs male collateral, but to REGINALD, lord Grey of Ruthin, whoſe grandmother was ſiſter to the forenamed ſecond JOHN HASTINGS.

The dukedom of Lancaſter came unto JOHN of Gaunt, by his wife, one of the daughters and heirs of HENRY, duke of Lancaſter. His ſon HENRY, knowing that as it came by a woman it ought lawfully ſo to deſcend, when he aſſumed the crown, fearing it might be annexed to the crown, he and the whole parliament thought it juſt, that by occaſion of his aſſumption of the crown, his inheritance ſhould not be impaired or altered, but deſcend in the ſame manner, form and condition as it came unto him.

Why then, *a pari ratione*, ſhould not the earl of Rutland, receiving the title of lord Roos by an heir general, think it as juſt that it ſhould deſcend by an heir general, notwithſtanding the aſſumption of an earl's coronet.

Likewiſe, whereas the earldom of Hereford came to HENRY V, by his mother, one of the heirs of HUMPHREY BOHUN, the parliament thought it juſt that all his hereditaments deſcended from her ſhould be diſſevered from the crown, and annexed to the duchy of Lancaſter; why then ſhould not the title of Roos be likewiſe diſſevered from the earldom of Rutland?

Anſwers to the precedents againſt my lord Roos.

THE precedent for the ſiſters and heirs of JOHN, earl of Oxford, who dyed 18 HEN. VIII. It may be anſwered, They were three ſiſters, and the honour was not diviſible.

They had no part of their father's lands, but ſuch as came from ELIZABETH HOWARD, their grandmother.

And it is to be doubted whether he uſed the title of lord Bulbeck, Sandford, and Scales; for in his ſtall at Windſor, where titles are moſt ſet out, he is ſtiled only thus, *le count de Oxenford* JOHN.

The

The precedent of the lord Matravers doth not fit this cauſe. For true it is, that HUMPHREY, earl of Arundel and lord Matravers, had a ſiſter and heir married to JAMES, earl of Ormond and Wiltſhire, but ſhe dyed *ſans iſſue*, as appeareth by inquiſition, 35 HEN. VI.

True it is, That THOMAS BEAUCHAMP, earl of Warwick, had GUY to his eldeſt ſon, who dyed before his father, and left two daughters, the one whereof dyed before her grandfather, the other was a profeſſed nun at Sholdham, and therefore his ſecond ſon THOMAS was found his heir. Inq. and eſcaet. 43 EDW. III. which alſo appeareth by his laſt will in theſe words.

It is acknowledged, That the heir general of THOMAS BERKLEY was married to RICHARD BEAUCHAMP, earl of Warwick, but ſhe left three daughters, among whom the inheritance of their grandmother lady Liſle was divided, and the title of the lord Liſle deſcended by the eldeſt of them to TALBOT, lord Liſle, and his poſterity. Neither was JAMES BERKLEY ſeized by entail of Berkley-caſtle, ſummoned to parliament until ELIZABETH, the counteſs of Warwick, was dead, and that by the King's gracious favour, as appeareth in the replication of the lord Latimer to the lord Brooke in the time of HENRY VII. and may be gathered by his place now in parliament.

Barons had their denomination from their ſurnames, and not from the ſeats of baronies.

THE barons named in the firſt roll of ſummons, 49 HENRY III. had their denomination not from their local names of their baronies, or manours, but from their own proper ſurnames, which were taken either from the place of their habitation, office, or ſome other reſpect.

As in ROBERT DE CAMOYS, CAMOYS was his ſurname, the capital ſeat of his barony was Broadwater.

ST. JOHN, was a ſurname, the ſeat was Lagham, or Sherburn, or Baſing.

LE DESPENCER, was but a ſurname, taken up by the poſterity of TURSTAN DESPENCER, who was ſteward to king HENRY I.

FITZ-JOHN, was but a ſurname, varied according to the father's chriſtian name.

MONTCHENSEY, a ſurname, his ſeat Edwardſton in Suffolk, or Swanſcombe.

BASSET, a plain ſurname, their ſeats Welledon and Sapcot.

HASTINGS, SEAGRAVE and ROOS, ſurnames from places in England.

EIVILL and COLVILLE, ſurnames from places in Normandy, and COLVILLE's ſeat was Bitham.

VESCY, a ſurname from a place in Normandy, Alnewick his barony.

GAUNT, a ſurname from a town in Flanders, his ſeat Folkingham in Lincolnſhire.

MARMION, a proper ſurname, his ſeat Tamworth or Scrivelby.

BERTRAM, a ſurname from a chriſtian name, and his barony Mitford.

All theſe having their honour of their baronies inveſted in their ſurnames, I ſee not why any ſhould ground their title upon their clodds of land.

And I cannot but marvel the variety in my lord of Rutland's title, aſſuming the titles of Helmeſley and Belvoir from the places, and Trusbut from the perſonal ſurname of his anceſtor, who had Wragby and Molton in Lincolnſhire *per baroniam*.

Well, we will not rely upon no cloddy barony, but upon the ſummons of HEN. III. where ROBERT DE ROOS was ſummoned by his proper ſurname (as the other then were) receiving his ſurname from his poſſeſſion of Roos in Holderneſs, and the honour of a baron from the King, from theſe general cauſes; for the honour of the King, defence of the King and kingdom, the increaſe of counſell; the word is . . . . . And theſe ſpecial cauſes, the King's confidence in their perſons, wiſdom, and worth; although we know that king

HENRY

HENRY I. enfeoffed his anceſtor with the barony of Warke, before Hamlack came by marriage, to be of that houſe.

Baronies held their capital ſeats not immediately of the King.

WHEREAS it is objected, That no man be called a baron, unleſs he hold his capital ſeat immediately of the King, and that Roos was held of the honour of the earl of Albemarle; albeit this is not to be granted, for in the county of York, where the manour, or lordſhip, of Roos is ſeated, BRIAN FITZ-ALAN was ſummoned to parliament, his chief ſeat was Bedall, as appeareth by the letter of the nobility of England to BONIFACE pope 1300. And that held of the earl of Richmond.

HENRY FITZ-HUGH was ſummoned, likewiſe his ſeat Ravenſwath, as appeareth by the ſame letter.

GEFFREY SCROOPE was ſummoned in 10 EDW. II. Maſham, by which his poſterity was ſummoned, was his chief ſeat.

HENRY SCROOPE was ſummoned *temp.* EDW. II. His ſeat was Bolton.

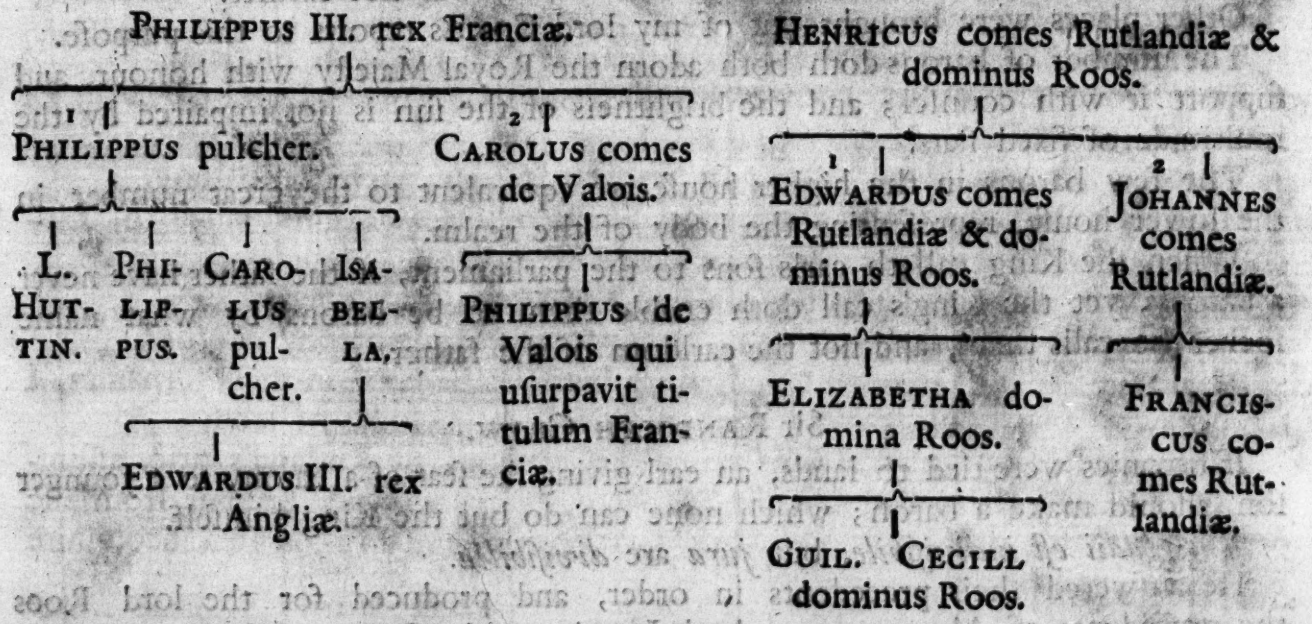
And all theſe capital ſeats, Bedall, Ravenſwath, Maſham, and Bolton, were held of the earl of Richmond, as appeareth by the book of Richmond fees.

In Holderneſs, where Roos is ſeated, there is Sutton, a manour ſome time in the tenure of JOHN of Sutton, who was ſummoned to parliament, *temp.* EDW. III. by the name of JOHN SUTTON de Holderneſs.

Riſe alſo is a manour in Holderneſs, and in the tenure of WALTER FAUCONBERG, who was ſummoned to parliament *temp.* EDW. I. and both Riſe and Sutton were held of the manour of Albemarle. Likewiſe NICHOLAS DE MEINILL was ſummoned to parliament *temp.* EDW. I. and Wherlton was his principal ſeat, as appeareth by the foreſaid letter to pope BONIFACE, and that it was holden of the archbiſhop of **Coventry*, no man can doubt, when the archbiſhop had always the wardſhip of their heirs; and all theſe in Yorkſhire.

* Query, *Canterbury.*

As in the biſhoprick of Dureſme it is notorious, that Raby was the principal ſeat of the NEVILLES, and Lumley of the lords LUMLEY, and both lords of parliament held their ſeats of the biſhop of Dureſme.



Gradus in ſe continet ſtatum, ſed non è contra. Noſme de dignitie 33.

The caſe of the lord Roos, 27 April 1616, before the commiſſioners for the earl marſhall.

Sir FRANCIS BACON.

MATTERS of honour before ſo honourable judges, cannot but receive an honourable determination.

The name of barons is ſubject to equivocation.

They were called *thanes* by the Saxons, *freeheres* by the Germans, and *lairds* by the Scotts.

Many earls writ in their deeds, *omnibus baronibus & hominibus meis.*

The conceit that all that held thirteen knights fees, ſhould be parliamentary barons before 49 HEN. III. is but a deviſe in the college of antiquaries; for afore that time there were parliaments and ſelected barons by the King, as appeareth by *charta magna* and *charta foreſta*, 9 HEN. III.

REX JOHANNES *ordinavit, quod omnes barones Angliæ in propriis perſonis ad parliamenta venirent, quoties & quandocunque ſummoniti fuerint.*

Barons in that age, ſome had their denomination from their place, and ſome from their ſirname; as now in our age to admit all for barons which held *per baroniam*, would bring in more barons than are now extant.

The lord Roos was ſimply ſo called among the *teſtes in charta magna*; and before that in the time of king JOHN; the diſtinction of Hamlake and Wark began when there were two barons of that ſirname, *temp.* EDW. I.

To ſpeak of barons before any parliament rolls are now extant, is to rumble in the duſt of antiquity, and to caſt a miſt before our eyes.

In the firſt ſummons extant, 49 HEN. III. the word is uſed, *mandamus, rogantes in fide & dilectione, qua nobis tenemini*; and afterwards *rogantes* was left out, and the word *mandamus in fide & homagio* uſed.

As every man ſpending 20*l.* is compellable to be made knight, ſo every one having thirteen knights fees is compellable to be called to parliament; yet the King may ſelect out of that number whom he pleaſe both for knights and barons.

That barons were not tied to places doth appear by the earl of Shrewsbury's caſe, but that it was an honour inveſted in the blood; and though the capital ſeat of the barony were alienated, yet the barony was not extinct.

Other places were brought out of my lord COKE's reports to this purpoſe.

The number of barons doth both adorn the Royal Majeſty with honour, and ſupport it with counſel; and the brightneſs of the ſun is not impaired by the multitude of fixed ſtars.

The few barons in the higher houſe are equivalent to the great number in the lower houſe, repreſenting the body of the realm.

When the King calleth earls ſons to the parliament, if the father have never a barony, yet the King's call doth enable them to be barons by what name ſoever he calls them, and not the earldom of the father.

Sir RANDOLPH CREW.

If baronies were tied to lands, an earl giving the ſeat of a barony to a younger ſon, ſhould make a baron; which none can do but the King himſelf.

Jus gladii eſt indiviſibile, but *jura* are *diviſibilia*.

He anſwered their precedents in order, and produced for the lord Roos the precedents of Abergavenny, lord Lovain, earl of Ewe, dukedom of Lancaſter. None called by the title of Abergavenny before BEAUCHAMPE; and the NEVILS uſed the title an hundred years before they had the poſſeſſion of Abergavenny.

W. HERBERT being lord HERBERT of Gowre and earl of Pembroke, ſurrendered his title of Pembroke for the earldom of Huntingdon, and retained the title of lord HERBERT of Gowre.

Rights concurring in one may be ſevered, as a paternal title may paſs one way, and a maternal another.

Sir HENRY MOUNTAGU.

Judgments paſſed for the lord Roos.

1. Of EDWARD, earl of Rutland, for his daughter in his laſt will.

2. Of the commiſſioners at the funeral of the lady Roos, his mother, where he was proclaimed lord Roos.

3. Of the heralds who proclaimed him, and the inſcription on her monument.

4. Of queen ELIZABETH, who acknowledged her lady Roos, and her ſon lord Roos, under the great ſeal, at ſix ſundry times.

5. Of JOHN, earl of Rutland, and ROGER, who never impeached that title in thirty whole years, but did ſue him, and were ſued of him, by the name of lord Roos.

6. Of king JAMES, who accepted him for lord Roos, both in ſuing his livery, and in his letters to the Emperor, when he ſent him to congratulate: And COURTNEY, earl of Devon, had no other creation but by a letter miſſive.

7. Of offices taken after the death of the ſaid lady Roos, his mother, wherein by the jurors he was found and called lord Roos.

Sir LAWRENCE HYDE.

Beginning to ſhew that many earls had no baronies annexed to their earldoms, the contrary part acknowledged the ſame, and ſo he forbore.

The lords commiſſioners commanded them to deliver in breviats of their arguments, but appointed no certain time.

Precedents ſhewing that in times paſt the younger brethren and collateral heirs of the eldeſt ſon, he and his heirs being reſtored in blood, after the death of their attainted father for treaſon, had been accepted as reſtored in blood alſo, by the benefit of that reſtitution.

LEON WELLES, lord Welles, attainted by parliament, died 1 EDW. IV.

- RICHARD, reſtored by parliament to the dignity to him and his heirs, 7 EDW. IV.
  - Sir ROBERT WELLES, knt. lord Welles, *ſine prole.*
  - JOHANNE, married to RICHARD HASTINGS, lord Welles in her right.
    - ANTHONY HASTINGS, *ſine prole.*
- JOHN, lord Welles after the death of JOAN, and ANTHONY, by force of his brother's reſtitution.

EDMUND of Woodſtock, earl of Kent, brother to EDWARD II. attainted and executed 4 EDW. III.

- EDMUND, earl of Kent, reſtored the next parliament, and died without iſſue, 12 EDW. III.
- JOHN, earl of Kent, by force of his brother's reſtitution, died *ſine prole* 26 EDW. III.
- JOHANNE, married to ſir THOMAS HOLLAND, knt. earl of Kent by her, by force of her brother's reſtitution.
  - THOMAS HOLLAND, earl of Kent.

The

The determination of the lord Roos's title.

JAMES, by the grace of GOD King of England, Scotland, France, and Ireland, defender of the faith, *&c.* to all to whom these presents shall come greeting; Whereas upon the humble petition of FRANCIS, earl of Rutland, exhibited unto us, whereby he claimed the name, stile, and dignity of lord Roos of Hamlake, as heir male to EDWARD, late earl of Rutland, against WILLIAM CECIL, son of the lord BURGHLEY, grandchild to the earl of Exeter, claiming the same as heir general, to the said EDWARD, late earl of Rutland; we thought fit for our better information in a cause of doubt, between persons of their quality, to refer the consideration and examination thereof, to our right trusty and right welbeloved cousins and counsellors, THOMAS, earl of Suffolk, our high treasurer of England, and EDWARD, earl of Worcester, keeper of our privy seal, LODOWICK, duke of Lenox and earl of Richmond, high steward of our household, CHARLES, earl of Nottingham, our high admiral of England, WILLIAM, earl of Pembroke, our chamberlain, our commissioners for the office of earl marshal; who having heard the several allegations, as well on the one side as the other, with the answers and replies of their learned counsel, fully and amply have made relation unto us of the evidence on both parts, and therewith have informed us, that in the record of the sessions of parliament, in the forty and ninth year of king HENRY III. ROBERT DE Roos was summoned, and did sit in parliament as baron, by the name of lord Roos, without any other addition; but in the time of king EDWARD I. there was given to the name of lord Roos, additions of Hamlake, and other additions, distinguishing several baronies of Roos; wherefore and because the land and barony of Hamlake is conveyed unto the said earl of Rutland, and the principal and most antient seat of Roos in Holderness is descended unto the said WILLIAM CECIL, as heir general; we therefore knowing, that as from the Sovereign power of Princes, all honours do flow, so also the admission and allowance of honours do rest in their grace and favour, and being disposed in our princely regard, towards both the said parties, to reconcile the variance between them; upon mature consideration, do accept and declare the said WILLIAM CECIL to be lord Roos, and to be so reputed, named, and called, and to have and use the ancient seat and place of lord Roos in our parliaments, and all other our assemblies; and that the said FRANCIS, earl of Rutland, shall be accepted, declared, and called lord Roos of Hamlake, and his son and heir, according to the laudable custom of England, shall enjoy the said name, title, and dignity of lord Roos of Hamlake, Trusboot, and Belvoir in our parliaments and other assemblies; in witness whereof, *&c.* Witness our self at Westminster, the two and twentieth day of July, *anno regni regis* JACOBI, *Angliæ, &c. quarto decimo.*

See DUGDALE's baronage, vol. II. p. 298. and vol. III. p. 407.

Per breve de privato sigillo, &c.

THE

THE

Earldom of *OXFORD*

AND

Office of Great Chamberlain, *&c.*

Die Mercurii prime die Martii 1625.

To the King's moſt excellent Majeſtie.

The humble petition of ROBERT lord Willoughby of Eresby,

Sheweth,

THAT HENRY DE VERE, late earl of Oxford, lord Bolbeck, Sandford and Badleſmere, deceaſed, the day wherein he died, was ſeiſed of the ſaid earldom and baronies, and of the dignities and preheminencies to them appertaining, and of the office of the great chamberlain of England, with divers privileges and profits belonging to the ſaid office, as of fee and right; and the ſaid late earl being ſo ſeized thereof, died ſeized without iſſue, the ſix and twentieth day of May, in the firſt year of your Majeſty's happy reign, and after his death, the ſaid earldom, baronies, and office, deſcended to the petitioner, as couſin and next heir to the ſaid late earl; that is, ſon and heir of MARY, late wife of PEREGRINE, lord Willoughby of Eresby, deceaſed, ſiſter of EDWARD DE VERE, late earl of Oxford, deceaſed, father of the ſaid HENRY, late earl of Oxford, deceaſed; and the petitioner ought in right to bear the name of earl of Oxford, lord Bolbeck, Sandford, and Badleſmere, and enjoy as well the ſaid earldom and baronies, with the dignities and preheminencies to them pertaining, as the ſaid office, with the privileges and profits to the ſame belonging, and therein ſerve your Majeſty: yet nevertheleſs ſo it is, may it pleaſe your excellent Majeſty, ROBERT DE VERE, eſq; without right, doth call himſelf in publick manner by the name of the earl of Oxford, and doth pretend that the ſaid earldom, baronies, and office, doth appertain unto him, to the wrong of your ſuppliant. For redreſs wherein your petitioner humbly prayeth, that the ſaid ROBERT DE VERE may be called before your Majeſty, or ſuch others whom your Majeſty ſhall be graciouſly pleaſed to appoint, to anſwer the premiſſes, and that the ſaid earldom, baronies, and office, may be declared, as of right they do, to belong to the petitioner and his heirs, and he ſhall pray for your Majeſty's happy and long reign, *&c.*

E Coll. Greg. King Lanc. Herald. Copied from Serjeant ROLLE's MS. book.

To the King's moſt excellent Majeſty.

The humble petition of ROBERT VERE, earl of Oxford,

Sheweth unto your Majeſty,

THAT whereas, according to your gracious direction, the lord marſhal, aſſiſted by the lord duke, the lord privy ſeal, the lord chamberlain, the earl of Leiceſter, the earl of Totneſs, and the lord Conway, on the five and twentieth of the laſt month, gave a hearing to the pretences of the lord Willoughby, then opened and preſſed by his council learned in the law; whereupon your petitioner conceived, that his lordſhip, to whom it moſt properly belongs, would have ſolicited the ſaid honourable perſonages to have made report of his claim and ſo have become a ſuitor to your Majeſty for the final expediting of the cauſe. Foraſmuch as your petitioner herein finds no ſuch forwardneſs in the lord Willoughby, as in reaſon from a juſt pretender ought to be expected, and for that your petitioner is in the mean time ſuſpended from his lawful inheritance, upon a bare petition; it is humbly beſeeched, that your Majeſty would be graciouſly pleaſed to call the ſaid honourable perſonages before you, to make their report, whereby your petitioner is very confident, that your Majeſty will receive good ſatisfaction, that the lord Willoughby, hath no juſt cauſe farther to proſecute his pretence; and that your Majeſty, in your royal inclination to juſtice, will thereupon graciouſly receive this petitioner, to that honour which is deſcended upon him; or if the lord Willoughby doth deſire, to decline that way of deciſion, wherein your Majeſty was pleaſed to put his claim, and ſo would avoid the report of the ſaid honourable perſonages, apprehending (as upon hearing of the cauſe he juſtly may) that it will make nothing for him, as your petitioner in that courſe was in all humble conformity content to ſubmit himſelf; ſo clear and confident is he ſtill, that as formerly he hath, ſo doth he now, humbly beſeech your Majeſty, that the title of the earldom, and office of great chamberlain, may be determined by the lords in parliament.

And as his anceſtors of the ſame name have for many hundred years been peers of this realm, and approved themſelves loyal and faithful ſubjects to your Majeſty's royal progenitors, ſo ſhall he be always ready to lay down his life for the happy preſervation of your Majeſty's ſacred perſon, your crown and dignity.

Then was read his Majeſty's anſwer, ſigned with his royal hand, and endorſed on each of the ſaid petitions alike, in manner following, *viz.*

CHARLES R.

Seeing theſe petitions concern ſo great an honour and office of inheritance, and that it falls out ſo opportunely during the ſitting of our high court of parliament; we think it fit to take the advice of our lords and peers of our higher houſe of parliament, who have the judges with them for their aſſiſtance, in any point of law which may ariſe: therefore our pleaſure is, that their lordſhips call the competitors before them, and examine their titles, and certify us what they find, and their opinions thereof; whereupon we ſhall do that to either party which ſhall be juſt.

Theſe being thus read, it is ordered that the counſel of both parties ſhall be heard here at the bar, on Saturday next at nine of the clock in the morning, and that both parties ſhall have warning given thereof.

Die

Die Lunæ viceſimo die Martii 1625.

The petition of WILLIAM, earl of Derby, was read *in hæc verba:*

To the King's moſt excellent Majeſty:

The humble petition of WILLIAM, earl of Derby, and the lady ELIZABETH his wife:

WHereas your Majeſty hath been graciouſly pleaſed to refer to the hearing of the lords in parliament, the claim and right of ROBERT VERE, and the lord Willoughby, to the earldom of Oxford, and office of great chamberlain of England, and the lords for clearing of doubts in law have deſired the opinions of the judges, before they proceed to give their voices and report to your Majeſty; your petitioners (who in honour to the name of VERES have hitherto been ſilent) do moſt humbly deſire your Majeſty to give order to the lords, that upon the hearing the judges opinions, they forbear to give their votes for the lord Willoughby, in any thing that ought to deſcend upon the heir general, your petitioners conceiving that their title, in right of the ſaid lady ELIZABETH, eldeſt daughter of EDWARD, late earl of Oxon, father of HENRY, laſt earl of Oxon, ought to be preferred before the title of the ſaid lord Willoughby, being more remote.

And your petitioners ſhall daily pray for your Majeſty's long and happy reign over us.

The which petition being read, the lord keeper ſignified to the houſe, that his Majeſty hath referred this petition to their lordſhips in ſuch manner as he did refer the other petitions.

Report was this day made to the houſe, by the lord chief juſtice, that himſelf, the lord chief baron, Mr. juſtice DODERIDGE, Mr. juſtice YELVERTON, and Mr. baron TREVOR, have according to the order of this houſe (11° *Martii*) conſidered of the titles of the competitors to the earldom of Oxford, the baronies of Bulbeck, Sandford, and Badleſmere, and the office of great chamberlain of England.

And their opinion is, that the honour of the ſaid earldom of Oxford was entailed upon AUBREY DE VERE, and his heirs male, by the parliament of 16 R. II. and that an eſtate therein to the heirs males was ſufficiently raiſed, and created thereby, and ſo reputed and enjoyed, by many deſcents of the earls, which could not have been (as the ſame is limited) if the ſame had only been an ordinance in parliament.

And that the ſaid honour is deſcended, and now of right belongeth to ROBERT DE VERE, one of the ſaid competitors, as heir male unto the ſaid AUBREY, by virtue of the ſaid entail; and as touching the ſaid baronies of Bulbeck, Sandford, and Badleſmere, their opinion is, that the ſame deſcended to the general heirs of JOHN, the fourth earl of Oxford, who had iſſue JOHN, the fifth earl of Oxon, and three daughters; one of them married to the lord LATIMER, another to WINGFIELD, and another to KNIGHTLEY; which JOHN, the fifth earl of Oxon, dying without iſſue, thoſe baronies deſcended upon the daughters, as his ſiſters and heirs; but theſe dignities being entire and not dividable, they became incapable of the ſame, otherwiſe than by gift from the crown, and they in ſtrictneſs of law reverted unto, and were, in the diſpoſition of King HENRY VIII; and yet nevertheleſs they find, that four ſeveral earls of Oxon, ſucceſſively, after the deſcent to the three daughters, as heir male of the ſaid earldom, aſſumed and

and took upon them thoſe honours and titles, in their writings, leaſes, and conveyances, and their eldeſt ſons have been ſtiled in the life time of their fathers, by the name and title of lord viſcount Bulbeck, and ſo reputed to be, the which they humbly leave to your lordſhips conſideration.

And as touching the office of great chamberlain, the lord chief juſtice further reported, that the major part of the judges, *viz.* three of the five judges, were of opinion, that the ſame did belong unto the heir general, the now lord Willoughby; but when they had peruſed divers notes and grants of the ſaid office, ſome *ad placitum*, and ſome for life, unto others who were not of the name of VERE, by RICHARD II, and divers other Kings; they all thereupon deſired time to peruſe the records, and to ſearch upon what cauſes the ſaid grants were made, and further to inform themſelves of the ſaid cauſe, before they deliver any reſolute opinion therein.

Ordered, that the judges ſhall have time till Tueſday next, to deliver their opinions touching the office of great chamberlain; and if they do not then agree in opinion, to be heard ſeverally.

Ordered, alſo, that the title of the earldom of Oxon, and the baronies, ſhall be decided on Wedneſday next.

The reſolution delivered by CREW, chief juſtice in parliament, concerning the earldom of Oxford; WALTER, chief baron; DODRIDGE and YELVERTON, juſtices; and TREVOR, baron, adviſing with him together therein.

My lords,

THIS great and weighty cauſe, incomparable to any other that hath happened in any time, requires great deliberation, and ſolid and mature judgment to determine it; and therefore I wiſh all the judges of England had heard it, (being a caſe fit for all) to the end we all together might have given our humble advice to your lordſhips herein.

Here is repreſented unto your lordſhips *certamen honoris*, and as I may well ſay, *illuſtris honoris*, illuſtrious honour.

I heard a great peer of this realm and a learned, ſay, when he lived, there was no King in Chriſtendom had ſuch a ſubject as Oxford.

He came in with the conqueror earl of Gwynes, ſhortly after the conqueſt made great chamberlain of England, above five hundred years ago, by HENRY I, the Conqueror's ſon, brother to RUFUS; by MAWD, the Empreſs, earl of Oxford, confirmed and approved by HENRY FITZ EMPRESS, HENRY II, *Alberico comiti*, ſo earl before.

This great honour, this high and noble dignity, hath continued ever ſince in the remarkable ſirname of DE VERE, by ſo many ages, deſcents and generations, as no other kingdom can produce ſuch a peer in one and the ſelf ſame name and title.

I find in all this length of time but two attainders of this noble family, and thoſe in ſtormy and tempeſtuous times, when the government was unſettled, and the kingdom in competition.

I have laboured to make a covenant with myſelf, that affection may not preſs upon judgment; for I ſuppoſe there is no man, that hath any apprehenſion of gentry or nobleneſs, but his affection ſtands to the continuance of ſo noble a name and houſe, and would take hold of a twig or twine-thread to uphold it: and yet time hath his revolution, there muſt be a period and an end of all temporal things, *finis rerum*, an end of names and dignities, and whatſoever is terrene; and why not of DE VERE?

For

For where is BOHUN? where's MOWBRAY? where's MORTIMER? &c. nay, which is more, and moſt of all, where is PLANTAGENET? They are intombed in the urns and ſepulchres of mortality.

And yet let the name and dignity of DE VERE ſtand ſo long as it pleaſeth God.

This caſe ſtands upon many parts.

Subtile diſputants may perturb the beſt judgments; there have been many thick and dark fogs and miſts raiſed in the face of this cauſe.

But *magna eſt veritas & prevalet*, truth lets in the ſun to ſcatter and diſperſe them.

ROBERT DE VERE, duke of Ireland and earl of Oxford, was, as the caſe is put, by the lord Willoughby's counſel, *undecimo* of RICHARD II, by judgment upon an appeal in parliament, and adjudged to forfeit all his caſtles, ſeigniories, lands, tenements, franchiſes, liberties, and all the poſſeſſions he had when the appeal began, in the 10th of R. II. ſaving rights of intail, *&c.*

Note, by the judgment, and what he is adjudged to loſe, no word of his honour but goeth lower, no word of hereditament.

But in the act of 14 E. IV, the name of dignity is given and forfeited by ſpecial name.

Poſſeſſions cannot do it, for *poſſeſſio eſt pedis poſitio*, which hath reference to land, not to honour.

By the act of 16 R. II. it appears that Sir AWBREY DE VERE ſhewed intails of land, but none of the dignity; yet the King graciouſly, for that they had been earls of ancient times, and being willing the eſtate and name of earl of Oxford (though it were ſo that they were forfeited by the judgment) ſhould not ceaſe, but ſhould continue in future time to the honour of the Kings of this realm, hath reſtored, given and granted by aſſent of parliament to AWBREY DE VERE, and his heirs males for ever, the eſtate and honour of earl of Oxford, and in full parliament he took his ancient place, and did his homage.

Note, though it were ſo that the honour were forfeited by the act of 11 R. II. yet the King granteth by this act of 16 R. II. and makes him earl by way of admittance.

Then the caſe is but this:

Tenant in fee-ſimple of an honour takes it by an act of parliament in tail to the males (for I hold this of 16 of R. II. to be ſo) then ROBERT DE VERE the competitor is entituled to the honour; and the acts of attainder in the time of R. II. and H. IV. do nothing in the caſe:

For then the caſe is but this.

A noble peer ſeized in fee of an earldom, takes an eſtate thereof to him and his heirs males by parliament, ſo long as the male line continueth, there it reſts and then there is no uſe (of dependents nor ſubſequents) mentioned in the act of 21 R. II. for the attainder of 11 R. II. hurts not.

And by the act of 21 R. II. which annulleth the act of 11 R. II. there is reſtitution of land, but no word of honour, which argueth that there was no honour loſt, and if it were, yet it was ſettled and eſtabliſhed by 16 R. II.

But admitting the earldom were loſt by the bill of attainder 11 R. II.

Yet the 16 R. II. hath the force of an act of parliament, and is not taken away by the act of 21 R. II. as a dependant upon the act of 11 R. II. See the acts themſelves.

And an eſtate tail to the heirs males of AWBREY DE VERE is given by that act of 16 R. II.

Wherein this difference may be taken between an ordinance in parliament, which may be in either houſe, and an ordinance by aſſent of parliament, which is by both houſes, and where the King conſents unto it.

There was variety and difference in penning acts of parliament in ancient times.
Rex per conſilium fidelium ſubditorum ſuorum ſtatuit.
Dominus rex de conſilio ſuo ſtatuit.
Dominus rex ſtatuit. And all theſe acts of parliaments.

In the caſe in queſtion, the earldom is given, granted and reſtored by aſſent of parliament to AWBREY DE VERE, and his heirs males for ever, which is a ſpecial limitation to the males by parliament, and out of the ordinary rules of law; for the limitation ſubſiſts by parliament.

He did homage to the King, and was placed by his peers, *in pleno parliamento*, even in the ſame parliament, *per aſſenſum parliamenti*, is as much as by the aſſent of King, lords and commons.

For of them the parliament is compounded.

1. *Per aſſenſum parliamenti*, involves all the ſtates, and a concurrence of all.

2. *Per aſſenſum parliamenti*, is as much as *authoritate parliamenti*.

For by aſſent of parliament is by authority of parliament, and by authority of parliament is by aſſent of parliament; for the aſſent makes the authority.

And this is a qualified reſtitution, and a gift of another eſtate.

3. If it were but an ordinance in parliament, it could not properly make him earl, nor give him this eſpecial eſtate tail, the parliament intended.

Coke's 8th Rep. p. 14. See p. 148 foregoing.

So as of neceſſity it muſt work as an act of parliament, and be ſo taken, as appeared by the Prince's caſe concerning the duchy of Cornwall.

4. The charter of the earldom is merely but an exemplification, and of that nature it is, *totidem verbis*, with the act.

The charter is dated after the parliament ended; for it is dated the 12th of February, two days after the end; but the earl ſat as earl in the parliament of 16 R. 2. before the charter was dated.

Ergo, not earl by the charter, but by the act of 16 R. II. and earl without ſummons.

5. If an ordinance only be entred in the parliament roll, and it hath the reputation and uſe of an act of parliament, that makes it an act of parliament.

The rule is poſitive for this in the Prince's caſe.

This is entred in the roll, and hath ſtill had that reputation and uſe.

That it hath been ſo uſed.

He ſat and was placed as earl in the ſame parliament, and not by writ.

In the parliament of 17 R. II. he was ſummoned, being earl, before by the parliament of 16 R. II.

In the parliament of 20 R. II. ſo likewiſe.

And both theſe before the act of 21 R. II. which was an act of reverſal of the act of 12 R. II.

So as the *interim*, between the act of 16 R. II. and 21 R. II. he ſat as earl by 16 R. II.

For while the act of 11 R. II. ſtood, which it did till the 21 R. II. the earl had no title to ſit there but by the 16 R. II. And it is a foreign intendment, and hath no probability of truth, that he would be an earl only by the ſummons, and not by the act, (as hath been objected) when the act of 16 R. II. was entred upon the parliament roll, and exemplify'd under the great ſeal of England.

And that was the title which was *notum notorium*.

He began to ſit by it in the ſame parliament of 16 R. II. and without writ, and ſat afterwards in 17 and 20 R. II.

If the act of 1 H. IV. took off and made a nullity of the act of 21 R. II. (which ſee at large) then the attainder of 11 R. II. ſtood, and he could not ſit by his old title of fee-ſimple, which was loſt by 11 R. II. but he ſat only by 16 R. II. and the earls continued ſtill to ſit by 16 R. II. till the act of 3 E. IV. which reſtored 21 R. II. being a time of ſixty years diſtance; ſo likewiſe did

the earls ſit after the 18th year of H. VIII. in parliament, in which year JOHN, earl of Oxford died, having three ſiſters, and heirs, and an heir male; which could not be, but by the act.

What eſtate is given by 16 R. II. whether an intail or a ſpecial eſtate to the males?

It is plain, that in the caſe of a common perſon, it were a fee-ſimple, if a common perſon made ſuch a gift.

If the King make ſuch a grant by patent, it is void in law; it is ſo in the King's caſe.

But in acts of parliament, the intent is conſiderable, and the purpoſe of the law-makers; for an act of parliament is not regulated by the ſtrict rules of law in the limitation of eſtates.

Teſtaments, acts of parliament, and arbitrements, are interpreted according to intent, as appears by our books, more particularly by the chancellor of Oxford's caſe.

And that the act of 16 R. II. intended an eſtate to the males, is moſt clear by the words thereof:

For it recites, that where the earl ſhewed the land was intailed, but ſhewed no intail of the earldom; yet the King of his grace, for the continuing of the name, and houſe, and honour of the kingdom, gives it to AUBREY, and his heirs males, *per aſſenſum parliamenti.*

What is the patent? the land was intailed before; now the earldom, by 16 R. II. and ſo one and the ſame eſtate in both.

And if there had not been an intail thereof, then when JOHN, the fourth earl of Oxford died, 18 H. VIII. without iſſue, having three ſiſters and heirs, the earldom being before anciently in fee-ſimple, had returned to the crown again.

Quia dignitas non eſt diviſibilis, it is integral and intire, and cannot be divided.

But *optima legum interpres conſuetudo.*

JOHN the fifth, earl JOHN the ſixth, EDWARD and HENRY, ſat in parliament by the intail of 16 R. II. elſe they had no title at all to ſit by; and they could ſit by no other title after the death of JOHN the fourth earl, without iſſue.

And to ſuppoſe that they ſat as earls, only by the ſummons, and not by the act of 16 R. II. inrolled and exemplified is too foreign to think of, and could not be. JOHN, earl of Oxford, the heir male of the family, was found to be earl by the office in 18 H. VIII. when KNIGHTLEY, who married the eldeſt ſiſter of the heirs generals claimed the earldom.

That JOHN ſat as earl in the parliament of 21 H. VIII. before King H. VIII. his award in 23 H. VIII. made upon a ſubmiſſion of the heir male and heirs general of their titles to the King; for the act 16 R. II. carried it to the male.

By which the King meant not by any thing in it, or by the word hereditament mentioned in it, to quit any title of his own (if any he had) but the titles pretended on each ſide by the parties which only were compromitted to the King.

By the award of 23 H. VIII. he is called earl, by the act of parliament confirming it, allowed to be earl.

The honour of earl being loſt by the act 14 E. IV. which attainted him, yet in the parliament of 1 H. VII. the earl was called by writ before he was reſtored, and therefore the earls from 21 R. II. ſat in parliaments by virtue of the writ of ſummons, and not by the act of 16 R. II. Object.

He was in 1 H. VII. ſummoned by writ, for that the King meant at that parliament to reſtore him; but he ſat not till the act of reſtitution paſt, as appears evidently: and if it had been fit or uſual to have made him an earl by a writ only, then he might have been ſo in 16 R. II. and there needed no act. Reſp.

Admit the act of 16 R. II. be an act of parliament, and an eſtate tayle, or a ſpecial eſtate to the males raiſed thereby, whether 21 R. II. annulling 11 R. II.

by

by which the attainder grew, and all the dependents upon it, takes not off 16 R. II. as a dependent, and thereby the old fee-ſimple reſtored, and then a deſcent to the lord Willoughby, as general heir ſince 18 H. VIII.

An act of parliament cannot be taken off, but by an act of as high nature, *viz.* another act of parliament, and not by inference, but by expreſs words.

The act of 21 R. II. mentions 11 R. II. and takes it off, and the dependents thereupon; but the word dependent cannot repeal an act of parliament; it is too heavy, and of too high a nature to be ſhaken off; it admits no diſpute, and there can be no remitter againſt an act of parliament.

The act of 21 R. II. nullifies 11 R. II. and reſtores the lands by expreſs words, *a fortiori*, it would have reſtored the honour, which was more worthy, if the parliament had not conceived it had been firmly ſettled by 16 R. II. and if 16 R. II. were taken off by 21 R. II. and 3 E. IV. then had the earldom been loſt.

In 18 H. VIII. when JOHN, earl of Oxford, died without iſſue male, having three ſiſters and heirs, that could not have it, the earldom being then in fee-ſimple; and it had reſted in the diſpoſition of the crown; which could not be, the poſſeſſion and uſe ſtill going the other way: and thereupon CREW, chief juſtice, delivering his own ſenſe, and the ſenſe of his brethren, gave their humble advice to the lords in behalf of the earl of Oxford, the heir male, againſt the lord Willoughby, the heir general.

For the baronies of Bulbeck, Scales, and Badleſmere, they conceived, that by the death of earl JOHN, in 18 H. VIII. without iſſue, having three ſiſters, thoſe honours returned to the crown in the ſtrict conſtruction of law; but the crown diſpenſed therewith, as it ſeems: for after the death of that JOHN, being JOHN the fourth, JOHN the fifth, JOHN the ſixth, EDWARD and HENRY aſſumed thoſe titles nominally in all their leaſes and conveyances, and the eldeſt ſon called ſtill by the name of lord Bulbeck.

Die Mercurii 22 *Martii*, 1625.

The King's reference to the houſe of the competitors for the earldom of Oxford, *&c.* being read,

It is agreed upon the queſtion, That the earldom of Oxford is deſcended, and ought of right to come unto the heir male, *nemine diſſentiente.*

It is agreed alſo upon the queſtion, that the baronies of Bulbeck, Sandford, and Badleſmere, are in his Majeſty's diſpoſition.

And as touching the office of great chamberlain of England, it is agreed that the judges ſhall conſider, and report to the houſe,

Whether the earl of Oxford, who made the intail of the ſaid office, were at that time ſeized of the ſaid office.

Admitting that he were ſeized of it, then whether ſuch an office may be conveyed by the way of limiting of uſes.

And the judges are to demand of Mr. WRIGHT a deed, which he hath in his cuſtody, of an intail of the ſaid office made by an earl of Oxford; in which deed the ſaid earl is ſtiled lord great chamberlain of England.

And the judges are to deliver their opinion on Tueſday next to the houſe.

Die Martis 28 *Martii*, 1626.

The lord chief juſtice reported unto the houſe, that according to the orders of 20 and 22 *Martii*, he and his brethren have again conſidered of the title unto the office of lord great chamberlain; and that three of them are of one mind, and two of them of another; wherefore they are ready to deliver their opinions ſeverally, and their reaſons for the ſame.

Whereupon Mr. baron TREVOR began, and delivered his opinion, That the ſaid office of lord great chamberlain doth of right belong unto the lord Willoughby, and gave his reaſons for the ſame.

Mr. juſtice YELVERTON delivered his opinion, That the ſaid office of lord great chamberlain of England doth belong unto the lord Willoughby as heir general unto HENRY, laſt earl of Oxford deceaſed, and gave his reaſons for the ſame.

Mr. juſtice DODRIDGE delivered his opinion, That the ſaid office is deſcended and doth belong unto the heir general of HENRY, the laſt earl of Oxford deceaſed, and gave his reaſons for the ſame.

The lord chief juſtice delivered his opinion, That the ſaid office of lord great chamberlain of England is deſcended, and ought to belong unto the heir male of HENRY, the laſt earl of Oxford, (*viz.*) unto ROBERT DE VERE, the now earl of Oxford, and gave his reaſons for the ſame.

The lord chief baron delivered his opinion, That the ſaid office is deſcended, and ought to belong unto the ſaid ROBERT DE VERE, now earl of Oxford, as heir male unto HENRY, the laſt earl of Oxford deceaſed, and gave his reaſons for the ſame.

It is ordered alſo, That counſel ſhall be heard here at the bar next Thurſday morning, upon the petition of the earl of Derby, and the lady ELIZABETH, his wife, for the ſaid office of lord great chamberlain of England; and that the lord Willoughby's council ſhall be then heard alſo, and then if time will permit, the houſe will give their reſolution touching the ſaid office.

The heads of the argument of CREW, chief juſtice.

JOHN DE VERE, earl of Oxford, in 4 ELIZ. being ſeiſed of the office of great chamberlain of England, and of divers honours, caſtles, manors, lands and tenements in fee-ſimple, in conſideration that the premiſſes had of long time remained and continued in the name of the VERES, and holding himſelf tied in conſcience to provide that the ſame may remain and continue in the name and blood of the VERES, from heir male to heir male for ever, if it might pleaſe GOD ſo to permit and ſuffer the ſame, by his deed covenanteth with the duke of Norfolk, the earl of Leiceſter, and others, that he and his heirs and aſſigns will from thenceforth ſtand ſeiſed thereof to the uſe of himſelf for life, the remainder to the lord Bulbeck, his ſon, and the heirs males of his body, with other remainders to the males of his houſe, the remainder to his right heirs.

ROBERT DE VERE is a pretender and competitor to this office, by virtue of that intail, as heir male thereof, and the lord Willoughby claimeth the ſame as heir general.

His lordſhip declared his opinion for the heir male.

Firſt he held,

That the office of great chamberlain of England, being a miniſterial office of skill or ſcience, howbeit it be an office of confidence, and holden by grand ſerjeanty, yet being granted to AWBERY DE VERE, and his heirs (in which generalty aſſigns are included) is not ſo individually appropriate and inherent to his immediate line of blood, but that although it be an office in groſs, it may nevertheleſs be alienated to another ſirname by licence from the crown, or without licence, if the King diſpenſe with it after, elſe there were a perpetuity of an office in fee-ſimple, which the rule of law and reaſon in no wiſe admitteth.

Secondly, Admit it could not be transferred to a ſtrange blood, yet it may be to a DE VERE, eſpecially being the heir male of the houſe (as this caſe is) without any violation or breach of truſt, as to the original gift, or the intention of the King that gave it.

And laſtly, The indenture of covenants of JOHN, earl of Oxford, in 4 ELIZ. to ſtand ſeiſed of this office to the uſe of himſelf for life, with the remainder

to the lord Bulbeck, his eldeſt ſon, and the heirs males of his body, with other remainders to the line male, and ſo to his right heirs, doth eſtabliſh a good eſtate tail to the heirs males, although it be a perſonal office, and follows the perſon, as in point of tenure ſuch an office of truſt follows the land, and the perſonal ſervice be in groſs, or by tenure, is the thing to be performed, and is one and the ſame in both caſes, and conſequently ROBERT DE VERE, as heir male of that JOHN, is inheritable to this office.

In the firſt,

He conſidereth the nature and amplitude of an eſtate in fee-ſimple to one and his heirs, which is the vaſt and indefinite eſtate of the law, comprehending in it males and females, having in them any perſonal defects or deformities of body or mind whatſoever, and conſequently by the generality of the perſons comprehended in ſo general and abſolute a grant, offices of confidence may be granted over, and it is improper to fix a truſt upon ſuch an eſtate in fee-ſimple, and upon perſons that a man cannot foreſee in the future to be capable thereof, or be fit to manage ſo great an office.

That if a woman happen to be the heir of that great houſe, and marry ignobly with a mean and unworthy perſon, as a yeoman, or mechanick, and he have a ſon by her, and ſhe die, the husband, in her life time, is ſeiſed of this office in her right, and after her death ſhall be tenant by the courteſy thereof.

That this office may be thereby transferred from the name of DE VERE to any obſcure and mean ſirname and family, which is fitter to be repoſed and preſerved in a more eminent name and perſon.

That a condition knit to this abſolute eſtate of fee-ſimple, not to alien, is a void condition in the caſe of a common perſon, for it is againſt the freedom and abſoluteneſs of this eſtate; yet the King may annex ſuch a condition, but then it muſt be expreſſed in the charter, which is not in this caſe.

Proofs thereof.

18 E. III. 27. J. S. was ſeiſed in fee-ſimple of the office of ſerjeanty in the cathedral church of Lincoln, and gave the ſame in tail to C. whoſe iſſue brought a *formedon* in the deſcender of this office, this was an office in groſs, and of truſt, and yet grantable, and ſuch a free-hold as a *formedon* did lie thereof.

That there is no inference in law to be made of any implied or involved truſt in an eſtate in fee-ſimple of ſuch an office, but only that it may not be transferred to an unworthy name and blood, which is prevented and provided for in this caſe, by ſettling the ſame upon the heirs males of this noble family, and to concur with the earldom, which is intailed by parliament to the males.

That in divers Kings times before 20 HEN. III. a man might alien lands held of the crown *in capite*, without any licence of alienation; for it was then thought to be too great a check and curb to an eſtate in fee-ſimple to be reſtrained, that it might not be aliened without licence.

14 E. III. 46 E. III. That it appears by the ſtatute of *prerogativa Regis*, and by other authorities in our books, grand ſerjeanties may by licence of the King be aliened, but the corporal ſervice of one man, cannot be altered into the corporal ſervice of another man, without the King's privity and allowance; and by the common law it was a forfeiture to alien lands holden by grand ſerjeanty (which is *regale ſervicium*, ſervice royal) without licence, but it is no forfeiture at this day, as doth clearly appear in my lord CROMWELL's caſe in COKE's ſecond reports: For that it is remedied by the act of 1 E. III. *cap.* 12. which (as appears by that book, extends to lands and tenements holden in chief (which all grand ſerjeanties be) that be aliened without licence, a reaſonable fine is therefore to be taken, which is in this particular caſe (the alienation be made to the heirs males of the houſe) is only fineable, and may be pardoned and diſpenſed with; and no doubt the word tenement doth include offices; for if an aſſize be brought of

of an office, it is *quare diſſeiſivit eum de libero tenemento*, and ever after this ſtatute, when any thing held by grand ſerjeanty is aliened without licence, a fine is taken, and never any ſeiſure, for a forfeiture, as is plain by experience in the Exchequer at this day.

That king HEN. II. granted to one WAYNFORT, and his heirs, *miniſterium de magiſtratu hoſtiariæ de ſcaccario libere & honoriſice*, with divers fees of value belonging to it; part of this office which extended into the Common-pleas was ſold, and the grantee being interrupted in the execution thereof, as appears in 7 aſſiſar. brought an aſſize, and produced the deed, and upon the deed iſſue was taken, and the ſale allowed as good by the rule of that book; and in that caſe, the ſale being made without licence, the King afterwards approved and confirmed the ſame, by which it appears, that betwixt a perſonal office and land holden by grand ſerjeanty, there is no difference, and that it is transferable in both caſes, and he obſerved that the word *honoriſice*, which hath been inſiſted upon by ſome that argued before, was applied to this inferior office.

This office is held by grand ſerjeanty, DYER, fol. 2. 13. 7 E. III. fol. 57. 7 Aſſ. p. 12. 36 & 37 ELIZ. Rot. 134. A common recovery ſuffered of this office.

That if there needed any licence in the caſe in queſtion, the office being ſettled by the deed in 4 ELIZ. upon the heirs males in blood, out of the eſtate of earl JOHN, without tranſmutation of poſſeſſion, that offence was pardoned by the general pardon of 5 ELIZ. for as the King may grant a licence to one to alien, ſo may he diſpenſe with an alienation without licence, after the alienation made, and the alienation is good between the parties, howſoever the King might impeach it.

That JOHN, earl of Oxford, died in Auguſt 4 ELIZ. the deed of covenants being made in June before, and that after his death, that deed 4 ELIZ. that raiſed the eſtate to the males, was found by office *in hæc verba* in 5 ELIZ. and EDWARD, earl of Oxford, ſued livery thereupon in 14 ELIZ. whereby the deed and alienation was found of record; and the Queen being ſo informed thereof allowed it, and he then had a ſpecial pardon granted unto him by queen ELIZABETH, by which all alienations made by JOHN, his father, and all forfeitures committed by the ſaid JOHN, or any his anceſtors, were pardoned; and it is above ſixty years ſince this conveyance was made; and ſince that time, this office enjoyed by that title in ſeveral deſcents. Hereby it appears plainly, that this conveyance made in *anno* 4 ELIZ. hath been judicially reſolved in the court of wards, to be good as well for the office of great chamberlain, as for the lands; for the deed being found in the office *in hæc verba*, the King was anſwered, but of the third part of all contained in the conveyance according to the values found in the office, where the King, if the deed were void for any part, ought to be anſwered for the whole of that part; and upon that office earl EDWARD had livery accordingly, and no doubt this conveyance in *anno* 4 ELIZ. was made by great advice, and the office likewiſe found by like advice, and the ſame judicially allowed by the court of Wards, ſo as he conceived it to be a ſtrong caſe, notwithſtanding any thing objected to the contrary, that this office may be granted to another perſon by licence of the King, for he is informed what the perſon is, and approved of him, and ſo may it be done without licence, when the King knoweth the perſon afterwards, and alloweth, or diſpenſeth with the grant.

Nota.

That in the caſes of 11 E. IV. 1. the office of chamberlain of the Exchequer, and the office of the marſhal of the King's-bench, in 39 HEN. VI. were both given in tail to the heirs males only, and neither of them could be then aliened, but were reſtrained from alienation by the ſtatute of W. II.

The original grant of the marſhal's office is intailed to the males, and not in fee, as BROOK conceived it.

That an eſtate in fee-ſimple hath not ſuch a tie or reſtraint upon it, being a free and an abſolute eſtate, and in the caſe in queſtion, tenant in fee-ſimple gave an eſtate in tail to the heir male of his houſe, being an hereditary eſtate, and not a particular eſtate for life.

That an office of truſt granted to one and his aſſigns for life, may be aſſigned over, as appears in the caſe of 11 E. IV. & 21 E. IV. 41. of the eſquire for the body; for in a grant only for life of ſuch an office, which is but a particular

eſtate, it cannot be granted over nor deputed, except deputy, or aſſignee, be in the patent, but an office of truſt granted to a man, and his heirs, may be granted over, for heirs includes aſſigns, and is as much as if it had been granted to a man, and his heirs and aſſigns.

18 E. III. 27. Statute 51 H. III. ſtatute de ſcaccariis, a deputation of great office of truſt.

That *jus baculi* hath no relation to *jus gladii*, as to dignify the blood, *cinguntur gladiis proceres*, the ſtaff is but matter of formality, and holden in the hand of more inferior officers, and the record vouched was no more but to ſhew the firſt gilding of the earl marſhal's ſtaff, which was matter of ſtory, not conducing to the caſe in queſtion, and the two caſes put of the founderſhip and gift of Frankalmoigne, have no reſemblance with this caſe, but moſt apparently differ from it.

The ſtatute of 5 EDW. VI. which prohibits ſelling of offices, concerning adminiſtration of juſtice, or concerning the King's revenue, or keeping forts or caſtles which have confidence and attendance annexed to them, doth except offices in fee-ſimple, whereby it appears that they be transferable.

And it is to be preſumed that no ſtranger of blood would enterprize to contract for this office, without the privity and conſent of the King, nor any other but a great and eminent peer of the realm, would be ſo ambitious as to deſire it, or ſhould be tolerated by the King to exerciſe the ſame, ſo as the ſettling of this office upon the heir male of the family, is an honour to the office, and to the crown that gave it; and he cannot find that the eſtate of this office was ever granted to any under the degree of a duke or an earl, only in 1 HEN. IV. the then earl of Oxford being in diſgrace with the King, was not ſuffered to perform his office at the coronation, but ſir WILLIAM EPPRINGHAM for that time only was appointed by the King to do it.

The ſecond point.

Admitting this office could not be transferred to a ſtranger, yet no doubt it may be transferred to the heir male of the houſe that hath the dignity of an earl, and that ſuch aſſignation is no breach of truſt, but a reinforcing and advancement of the truſt.

And if king HENRY I. who gave the office, or the Kings that afterwards confirmed it, were alive and asked the queſtion, Whether they would allow ſuch a conveyance as this is, by which means a woman being a general heir, that might marry not ſo worthily, ſhould be excluded, and the office go with the earldom in the line male? They would commend and cheriſh the earl for ſo ſettling it, as doing that which was moſt ſuitable with their royal intentions.

18 Aſſ. pl. 18 & 18 E. III.

That in 18 E. III. the lord Clifford, by licence of alienation, gave the ſherivalty of Weſtmerland, which he had in fee, to two chaplains, to the end to give it to him back again, and the heirs males of his body, and allowed to be good by the rules of that caſe; and this is a great office in confidence, and of truſt, perſonal and corporal, and holden by grand ſerjeanty, as appears in my lord Cromwell's caſe: *Ergo*, It may be done in the caſe in queſtion to the heir male of the family, and he knew not what anſwer can be made to this caſe.

Note, a deſcent of the office to three daughters.

That upon the death of JOHN, earl of Oxford, 18 HEN. VIII. having three ſiſters and heirs, upon whom the office of great chamberlain deſcended, yet howbeit one of them was married to a great baron, the King to whom the heir male, and general heirs ſubmitted their titles, for the poſſeſſion of that earldom, did nevertheleſs for the continuance of this great office in the name of DE VERE award it and other offices to JOHN, the heir male, and his heirs, giving ſomething elſe in lieu thereof to the general heirs, not holding it fit it ſhould go to them, from the ſirname of DE VERE, therefore it is transferable.

Examples.

The earl of Arundel being ſeiſed in fee of the caſtle and manor of Arundel, being held by grand ſerjeanty (as all antient earldoms and baronies were) did by fine levied 21 E. III. convey this to the heirs males of his name, and howbeit he was then tenant in fee-ſimple thereof, and it was inherent in the blood, yet the earldom went with that intail.

So

So did the lord Berkley his caſtle and manor of Berkley in 23 E. III.

So did THOMAS BEAUCHAMP convey the caſtle and manor of Warwick to the heirs males, being then ſeiſed thereof in fee.

So likewiſe the counteſs of Derby the barony of Grooty to a ſecond ſon.

The baron of Kilpeck, the caſtle and manor of Kilpeck to a ſiſter's ſon, one PLANTAGENET; and theſe held theſe earldoms and baronies, and were earls and barons accordingly, having the caſtles and manors, and being of the blood. And the heirs generals, by ſuch conveyances, were excluded; but if theſe caſtles and manors, being local, had been conveyed to ſtrangers of blood, they ſhould not have been earls and barons.

And therefore this great office may be well conveyed to the heir male, which is the more honourable and eminent blood; and the record produced of HUMPHREY DE BOHUN is nothing to this caſe; for he being ſick, and unable to exerciſe the office of conſtable of England, did grant that office to WILLIAM BOHUN, earl of Northampton, his brother, and a manor and certain lands in Norfolk, only for the life of WILLIAM; this he did without licence of the King, for ought appears by that record: nevertheleſs the King afterwards approved and confirmed it; as was done in the caſe of 7. E. III. cited before *de Hoſtiario de Scaccario*; but the earl of Northampton had not any of the manors conveyed unto him, whereunto the office of conſtable was fixed by tenure; but the manors ſtill remained in HUMPHREY DE BOHUN, as appears by the caſe of 6 H. VIII. vouched on the other part, and lie in Glouceſterſhire, and not in Norfolk; ſo as the office being granted *per ſe*, and but for life, it was fit to procure a licence, and the King's approbation thereof; for the earl of Northampton was, as it were, but a deputy or ſubſtitute for a time to exerciſe the office: for the manors whereunto the office was tied, and the office itſelf, did both deſcend to the daughters and heirs of HUMPHREY DE BOHUN after his death; and if HUMPHREY DE BOHUN had ſold the land by which the office was holden to a ſtranger, the purchaſer ſhould have been conſtable *de jure*, without all queſtion; whereupon he inſiſted ſtrongly, that this land and office, albeit it be an office of truſt, may be ſold away by licence, and by licence to a ſtranger. So likewiſe without licence, if the King pardon or diſpenſe with the alienation afterwards; for then he knows what is done, and to whom the alienation is made, and diſpenſeth with it, as was done in this great caſe in queſtion; wherein there was a general pardon, and a ſpecial and particular pardon and livery ſued upon the alienation, as is before mentioned.

2 part 12 E. 3. 21 in Tur'.

Nota.

And there is no difference betwixt an office by tenure of grand ſerjeanty, and in groſs, in reſpect of the perſonal ſervice and dignity thereof, but in point of transference, or execution, it is one and the ſame; but ſuch a perſonal office is no way to be reſembled to an earldom: which without queſtion cannot be granted over *per ſe*, for that is fixed to the identity of the perſons, and inherent in the blood nobilitated by the King.

The third point.

That an eſtate tail to the males, by the deed of covenants of 4 ELIZ. was well raiſed and eſtabliſhed: in which caſe there is no tranſmutation of poſſeſſion, but the uſe is raiſed out of the immediate poſſeſſion of the earl, who hath an eſtate for life limited unto him by this conveyance in the office, and ſo continued the immediate tenant thereof.

And it is by him ſettled in the blood, ſo as in this caſe there is no change of poſſeſſion, as upon an alienation to ſtrangers; and howſoever it be, yet by the ſtatute of 1 E. III. there was but a fine to be paid, and the alienation without licence doth not avoid or impeach the conveyance, as betwixt the parties.

For in this caſe there is no feoffee to an uſe, out of whoſe eſtate an uſe ſhould ariſe; but the uſe ariſeth out of the immediate eſtate of the earl, which as ſoon as the deed is ſealed, the uſe paſſeth, and *ipſo momento* is executed in poſ-

ſeſſion; ſo as the earl was never out of poſſeſſion, but uſe and poſſeſſion concurred.

And the only queſtion now is, whether the particular uſes expreſſed in the deed of 4 ELIZ. to the heir male of the family, ſtand good in law or no, and not what uſes be inconvenient or unlawful; for that is not the queſtion, but whether this that is done be well done or not.

That the ſuppoſed truſt involved in the original gift of this office, is no other, but that the office may not be beſtowed on mean perſons and unworthy families, which here it is not, nor yet to executors, which ought not to be, nor to the uſe of his will, nor to a younger ſon, (both which, as the caſe may be improper in an office of this nature, the circumſtances conſidered) but to the heir male of this noble family, that inherits the earldom; which anſwers the foreign objection made, that there cannot be a truſt upon a truſt.

But for the better underſtanding of this point, he conſidered the nature of an uſe at the common law.

A Grant to an uſe, was a confidence repoſed by the grantor in the grantee, that notwithſtanding the eſtate was in the grantee

Yet nevertheleſs he would ſuffer the grantor to take the profits of the things granted.

As for example, in this particular caſe, to ſuffer the earl to exerciſe the office, and to take the profits thereof, notwithſtanding the grant, and now ſince the ſtatute of 27 H. VIII. which knits the uſe and poſſeſſion together, that confidence is taken away, and the uſe and poſſeſſion in the inſtant of time unite and incorporate together; and the eſtate of all the great houſes in England ſtand or fall upon limitation of uſes at this day; and therefore beware how you enervate or weaken ſuch aſſurances, by any nice or tranſcendent conſtruction.

That the ſtatute of 27 H. VIII. of uſes is general, and extends to any honours, caſtles, manors, lands, tenements, rents, or other hereditaments, wherein this word [other] is very ſignificant, and reacheth to this caſe; for no man can doubt but this office is an hereditament, and other than that was mentioned before, and ſuch an hereditament whereof an eſtate tail may be created by the ſtatute of W. II. and whereof an aſſize lieth, and can have no reſemblance with an annuity, which is merely perſonal, and cannot be intailed by that ſtatute.

Nota. If it may be intailed, it may be conveyed to an uſe.

That an aſſize may be brought of this office, ſo as there is a ſeiſin thereof, and ſo conſequently there may be a ſeiſin to uſe.

It is *exercibile in palatio regis* in the King's grant, and is granted *cum liberationibus & hoſpitiis curiæ*; ſo as there is a place of the exerciſe thereof.

It is an office of profit and revenue, having great fees and regards belonging to it upon reſpits of homage, liveries, and reſtitution of temporalties, and the annual profit thereof is received in the office of the *Petty-bag*, beſides the great fees belonging to it at the coronation; ſo as there is a place to be put in view by the recognitors of the aſſize, if the aſſize be brought, and the judgment is *quod recuperet ſeiſinam.*

That howbeit the office be perſonal in execution, yet it is real in perception of profits; and therefore an uſe may be raiſed thereof, eſpecially in this caſe, to the heirs males of the family.

That a ſeigniory conſiſting of homage and fealty, the ſervice being merely perſonal, and to be performed by the perſon of a man; and reſting in feſſaunce, may be granted to an uſe in reſpect of the poſſibility that the tenancy may eſcheat, which perhaps will never be; *a fortiori* in this caſe, where there is a preſent profit and revenue of this office to a good value.

That a ſtewardſhip or bailywick in fee-ſimple of a manor, may be granted to an uſe being perſonal offices in point of ſervice.

So a liberty of *returna brevium*, which is perſonal, conſiſting in execution of proceſs, as it was ruled in the counteſs of Warwick's caſe, 42 ELIZ. in the King's-Bench.

So

So likewiſe a rent *in eſſe*, or an advowſon in groſs, or a common for ſo many beaſts, which is to be taken by the month; which be harder caſes than the caſe in queſtion.

And in the third of king JAMES, the earl of Cumberland being ſeiſed of the office of ſherivalty of the county of Weſtmerland in fee, did covenant to ſtand ſeiſed of all his manors, lands, tenements and hereditaments in the county of Weſtmerland, to the uſe of himſelf and the heirs males of his body, the remainder to the now earl of Cumberland, and the heirs males of his body; and after by his laſt will, reciting that conveyance, did for further ſecurity, deviſe all the ſaid manors, *&c.* and the ſherivalty of Weſtmerland to the now earl of Cumberland, and the heirs males of his body, by virtue whereof he enjoyeth it, and the counteſs dowager had the manors and lands in Weſtmerland aſſured to her for her jointure; but the ſherivalty went with the earl.

And where it hath been ſaid that a truſt cannot be raiſed out of a truſt, and therefore a bargain and ſale by deed indented and inrolled cannot be limited to an uſe, becauſe an uſe cannot be limited to an uſe, yet notwithſtanding, when a man is ſeiſed of an eſtate of inheritance of an office holden by grand ſerjeanty, wherein there is required truſt in the perſon, yet may an uſe which is a pernancy of the profits belonging to that office be raiſed of the eſtate of inheritance, otherwiſe no land holden by grand ſerjeanty could be transferred to an uſe, nor any uſe raiſed out of the ſame.

Therefore the diverſity is manifeſt between a mere and naked truſt, wherein he that hath it, hath neither *jus in re*, nor *jus ad rem*, nor remedy by the common law, but only a meer perception of the profits by the permiſſion of the *terre* tenant, and an eſtate of inheritance, wherein the owner hath both *jus in re*, and *jus ad rem*, by the rule of the common law, and for the profit whereof the law giveth the owner remedy by writ of aſſiſe, and a *præcipe quod reddat*, as the caſe requireth; and the confidence required in the perſon for the executing the office may be an objection (though a weak one) that it cannot be transferred over, but not that an uſe, that is, a pernancy of the profits cannot be raiſed out of the eſtate, the truſt in the perſon is no objection at all; for the uſe reſpecteth the eſtate of inheritance, and not the perſon.

So as in the examination of this caſe throughout, he could not ſee or find any inconvenience herein, either in the point of licence or limitation of the uſe, there being no change of poſſeſſion nor of blood, but an eſtate ſettled by this conveyance of the earl in the heirs males of the noble houſe; whereupon Kings and States have their eyes, as upon the moſt eminent and worthy blood.

And this noble office, being ſo long ſince granted to AUBREY DE VERE, and in the great revolution of time ſince, never fixing itſelf in the female line, he ſaw no cauſe now in the great declination of the houſe, to take away any means to ſupport it, or honour from it.

And therefore he concluded ſomewhat confidently, and ſo gave his humble advice, That this great office by licence of the King, was transferable to a ſtranger at this day, or without licence if the King did afterwards diſpenſe with it, as was done in this caſe, and admitting that it were not transferable to a ſtranger, yet it might be to the heir male of the blood, and that only is the caſe now in queſtion; and that at the moſt there was but a fine to be paid for it. And laſtly,

That it might be done by this form of conveyance, by way of covenants to raiſe the uſe; therefore in as much as this office never went to a general heir, but while it remained in this family remained ſtill with the heirs males of the houſe.

And for that earl JOHN, by this conveyance which hath been judicially allowed did affix and accouple together this great earldom and office ſixty years and more ago, and gave the office as a bride and a ſpouſe to the earldom, being formerly ſettled by act of parliament upon the heirs males of the family; and the office by this conveyance to the males likewiſe,

Since they were thus joined together (and this only flower left in the garland of the earldom) he could not by his advice divorce or put them asunder, but humbly submitted his opinion to their lordships great judgments; and in the end of his argument, prayed their lordships in respect the case was so great and weighty, of so noble a family, and was meerly *quæstio juris* of inheritance, that their lordships would be pleased to take the opinion of all the judges of England herein, all of them being assistants to this court, and all their advices being (as he conceived) necessary to be had, in so important, and so noble a case.

Nota. See the statute of 51 H. III. *statutum de scaccariis*, the constable, marshal, chamberlain, and other that are of fee in the Exchequer, shall from henceforth present to the King such as they put in their places to do their offices, which must be good and sufficient; for whose acts themselves will answer; so a supply by a deputy.

Mr. justice DODRIDGE his argument.

THERE do concur in this case three circumstances of worthy consideration.

First, It is a case of great consequence, for it concerneth the disposition and ordering of this honourable office of lord high chamberlain of England.

Secondly, It is a rare case; for this question, for any thing that I know or can learn, came never in any age in question heretofore.

Thirdly, It is a case of great difficulty, and intricacy, which hath set us in division, as you see: We are no judges of that, for that is out of our sphere; we are called in to advise only, and our advice must needs be distracted, because we are divided in opinion: Mine opinion and advice is with my two brethren that spoke before me, That this conveyance, by way of use, is not sufficiently made in 4 ELIZ. to transfer this great office of high chamberlain from a fee-simple, to a state-tail, from the heir general to the heirs males. Every man aboundeth in his own sense. And we cannot but deliver the reasons that move us, and so to lay them at your feet, and leave them to your most honourable considerations.

My opinion and advice is carried, and led by the consideration of four principles and heads, whereunto, and under which, all that may be spoken, in this discourse, may be referred.

1. The first shall be drawn and deducted from the great trust and confidence which king HENRY II. for him, and his heirs, did repose in AWBREY DE VERE, and his posterity, for the performance of this honourable charge and duty.

2. The second reason shall be drawn from the consideration of the estate given, which was a fee-simple, which nevertheless, as this case is, cannot be transferred over to any other blood, notwithstanding the general amplitude of an estate in fee-simple; and herein I shall endeavour to remove such doubts and ambiguities, as I conceive may arise in the debate hereof.

3. The third reason shall be deduced from the consideration of the nature of this kind of inheritance, which is an honourable personal estate, and corporal service, full of dignity and respect, and no way to be compared to lands and tenements, which are local and real.

4. The fourth reason will be drawn from the consideration of the nature of an use, wherein the question will be, whether a man seised of such an honourable office as this, may convey that by way of use; which although that be the main and principal question now to be debated, yet are there other reasons and heads exceedingly conducing thereunto.

The firſt reaſon: This is an office of great truſt and confidence.

An office of truſt and confidence may not be transferred over, by him in whom the truſt is repoſed, without the aſſent and privity of him and his heirs, that did repoſe that truſt and confidence.

But this is an office of great truſt and confidence, *ergo* not to be transferred over.

The major of this argument is proved by theſe circumſtances.

Firſt, The King and his poſterity are the eminent perſons that do repoſe the truſt, and AWBREY DE VERE, and his poſterity, are the perſons truſted; and therefore they that will alien the ſame, do break the firſt primary and radical truſt included in the firſt grant; for ſo that might be conveyed unto one, in whom the King repoſeth no truſt, or unto a man unworthy of the King's preſence, or unto a man unknown.

That this office containeth great confidence and truſt, who can deny? Is it not a great truſt to be ſo near unto a King's ſacred perſon, as to bring unto him his inmoſt garment, to apparel him in his royal robes, and ornaments, to give him water to waſh at the high ſolemnity, and day of coronation, the day of jubilee and joy of the kingdom? And how can the King be ſecure in his thoughts, if this truſt and confidence were broken, or brought to any other?

It is ſaid in our books, that if a man of ſtate would give unto another, and his heirs, an office to be his carver, and to carve to the grantor, and his heirs, that this is an office of confidence and truſt, and cannot be granted over. 21 E. IV. 84. a.

That this office of lord high chamberlainſhip hath a truſt deſcending from the anceſtor to the heir, is apparent; for every heir, at every coronation, performeth, or claimeth to perform, the ſame duties of truſt that his anceſtors did; therefore a confidence and truſt deſcendable.

But it may be objected, How can a man put confidence in thoſe whom he knoweth not? The heirs of a man are unknown, and in all ages GOD maketh heirs, and heirs are perſons not of preſent, but of future times.

To this I anſwer, That confidence and truſt may be put in the poſterity as well as in the firſt grantee; for when the King advanceth a man and his heirs to honour and dignity, and to perform ſuch an honourable imployment, he alſo truſteth, that the poſterity will be mindful of this bounty and benevolence, and ſtrive to perform that confidence, that truſt, which was repoſed in their anceſtors, with a grateful remembrance, ſince they are to perform the ſelf ſame honourable duty that their anceſtors did.

Omnes nos boni ſemper nobilitati favemus & quia utilis eſt reipublicæ, nobiles eſſe homines dignos majoribus ſuis, & quia valere debet apud nos clarorum virorum de republica bene meritorum memoria etiam mortuorum. TULL. pro SESTIO.

So that we honour dead anceſtors which live in their worthy poſterity, and we honour poſterity for both.

An uſe which is nothing but a confidence, deſcendeth from the feoffee in uſe to his heirs. 35 H. VI. Fit. ſupp. 22.

And here the original charter is, *pro me & heredibus meis dicto* ALBERICO *& heredibus ſuis.*

The ſecond reaſon, drawn from the eſtate in fee-ſimple.

If the truſt may deſcend it is not material, whether the eſtate be fee-ſimple, or otherwiſe; for the eſtate in fee-ſimple is as well ſubject to truſt as any other eſtate.

Here two objections are to be removed, Firſt, It may be ſaid, that when the grant is in fee-ſimple of an office, that the grantee may grant that over to any other, and the intent of the grantor may be ſo conceived, by reaſon of the generality of the perſons comprehended in the generality of the eſtate in fee-ſimple; for that may deſcend as well to females as to males, ideots, lunaticks, in-

ſants, or other perſons unfit as well in mind as in body; and by the ſame reaſon that may be granted unto ſtrangers.

I anſwer, and deny the conſequence; for we ſee rather than it ſhould deſcend unto ſuch unable perſons, the grantor, and his heirs, hath ſuch a power over the grant, by reaſon of the confidence, that he and his heirs, and none other, ſhall make a ſubſtitute or an aſſignee, as we ſee the Kings of England have done, not only in this honourable office, but in like honourable offices of like nature, as ſhall appear hereafter more at large.

And the ſame man in our books, that holdeth this opinion, that an office granted in fee-ſimple, may be granted over, holdeth that in the caſe of a common perſon, but excepteth it in the King's caſe; for he ſaith, That if the King do grant unto another the office of conſtableſhip of any of his caſtles, that ſuch officer ſhall forfeit the ſame in the King's caſe; and whether it be by way of tranſmutation of the officer, or diſcharge of the office, all is of one effect.

Another objection may be made thus, That a man cannot have a more ample eſtate in the law, than fee-ſimple, nor have a more free diſpoſition for any eſtate than fee-ſimple, he cannot be checked in his power of alienation; and if a man grant in fee-ſimple upon condition, the grantee ſhall not alien, this condition is void, as contrary to the amplitude of the eſtate in fee-ſimple.

To this I anſwer, That there be many things granted in fee-ſimple, which cannot be aliened, as, a founderſhip.

L. 5 E. IV. 118. 22 H. VI. 28. a. and many other things, as homage anceſtrel, LITT. 21 E. IV. 84. a. PIGOT. 21 E. IV. 84. a. SUYLIARD.

And it is agreed by ſome opinion in our books, that if a common perſon will give lands to one in fee-ſimple, upon condition he ſhall not alien, this condition is void; yet if the King by his letters patents will give land to a man, and his heirs, with condition he ſhall not alien, this is a good condition, and we are now in the King's caſe, where the King was the giver, 21 H. VII. 8. a. VAVASOR.

The third reaſon drawn from the nature of this kind of inheritance.

If a man be created earl to him and to his heirs, all men do know, that although he have a fee-ſimple, yet he cannot alien, or give away this inheritance, becauſe it is a perſonal dignity annexed to the poſterity, and fixed in the blood; it may be ſaid, that an earldom is a dignity, and ſo is not this office of great chamberlainſhip.

The anſwer: It is a perſonal dignity, as the earldom is, for the words of the firſt original patent is, *Quare volo quod ipſe & heres ejus eum jure hereditario teneant cum omnibus dignitatibus, libertatibus & honorificentiis ad eam pertinentibus*; and therefore no doubt but this office is an honourable dignity.

It may be ſaid that an earldom *eſt jus gladii quod in alium transferri non debet cincto gladio*; as the earldom is *jus gladii*, ſo is this honourable office *jus baculi, jus togæ*; he hath *clamydem & baculum*, the robe and ſtaff, the ſame enſigns of honour, that the ancient Roman conſuls were adorned with, *togæ prætexta & ſcipioneeburneo*, ſo there is the robe and the white ſtaff.

This honourable office is a corporal and perſonal ſervice, holden of the King's moſt royal perſon in grand ſerjeanty; the words of the charter be, *tenendum de me & heredibus meis.*

If this be a perſonal dignity, as is the earldom; if the earldom cannot be aliened, I know no reaſon that this ſhould be aliened.

It may be ſaid that this honourable office is an office of profit, for it hath ſundry fees belonging unto it, and therefore in reſpect of that it may be aliened.

Diſtinguendum eſt, where the profit is the principal, there perchance ſome alienation of the profits may be, eſpecially in the ſpecial offices, where the fee is the principal thing regarded.

But

But here this honourable ſervice is the greater, and the fee is but concomitant, and an incident to the office, and the fee dieth with the death of the officer, which is the *magis dignum.*

If the King create a duke or an earl, and doth give him an annual fee, he cannot give this annual fee to any other, 6 H. VIII. 2. a. DYER. 2.

Ex Rot. Patent. 12 E. III. part 2. m. 25. the office of high conſtable did deſcend by many deſcents.

In the blood of the BOHUNS, earls of Hereford and Eſſex, the caſe in 6 H. VIII. if that deſcend to daughters, they may make their aſſignees, and if the eldeſt be married, her husband ſhall execute the office.

But this muſt be underſtood with the King's licence and his diſpoſition.

For HUMPHRY DE BOHUN, high conſtable, would have transferred this office unto WILLIAM BOHUN, his kinſman, the earl of Northampton, for term of his life, but could not; he made his petition to King EDWARD the third, that he might ſo do: and this was the manner of the proceeding, he did alien by the King's licence, the manors whereby this office was holden to his ſaid couſin WILLIAM, the earl of Northampton, for life, and after the ſaid WILLIAM had the grant of the ſame office of conſtableſhip from the King, by the King's grant, which if HUMPHRY DE BOHUN might have done of himſelf, that long, chargeable, and tedious ſuit and means needed not.

The office of the earl marſhal of England deſcended long in the blood of BIGOTT, earl of Norfolk, until 30 E. I. at what time ROGER DE BIGOTT ſurrendered and releaſed it to the King, who the ſame year granted it to the ſame BIGOTT; but afterwards King E. II. granted the ſame unto THOMAS DE BROTHERTON, his brother; BROTHERTON died, having his heir MARGARET, counteſs of Norfolk; during whoſe life, King E. III. and R. II. diſpoſed this office to divers others, ſometimes for life, ſometimes during pleaſure, until at laſt King R. II. in 20 R. II. gave it by his patent in parliament, to THOMAS MOWBREY, earl of Nottingham, who was the grandchild of the ſaid MARGARET; and ſo it came to the blood of BROTHERTON again, in the name of MOWBREY.

I do alledge this patent, becauſe it is a large patent, and containeth many things worthy of knowledge, and to the purpoſe in hand; for by this patent are reſtored to the earl of Nottingham divers petty offices which were belonging to this great office of earl marſhal; as the marſhal of the King's-Bench, the marſhal of the Exchequer, and the cryer's office of the marſhalſea of the King's honourable houſhold, which were diſpoſed by the former Kings unto other men, and doth give power to the ſame earl, to make aſſignment unto others of the ſaid office for life;

Which is the cauſe that the judges, as well in H. the ſixth's time, as in E. the fourth's time, are of clear opinion, that the earl marſhal could not have aliened, or made an eſtate for life, to any other, of any of the ſaid petty offices, had he not had word and power ſo to do, given him by his patent; of which I do infer, that if he could not have made an aſſignee in thoſe petty offices which were but incidents, much leſs might he have aſſigned the office of earl marſhal himſelf, which was the great and principal office.

And becauſe I have ſhewed before, that as well the ſtaff was an enſign of honour, as well as the ſword to the earl; that charter hath ſomething worth knowledge concerning the ſame; the words be theſe, *Conceſſimus pro nobis & heredibus noſtris eidem comiti quod ipſe & heredes ſui maſculi mareſcalli Angliæ ratione officii ſui prædicti habeant, gerant & deferant, tam in preſentia noſtra quam in abſentia noſtra & heredum noſtrorum, quendam baculum aureum circa utrumque finem amulatum nigro cum ſigno armorum noſtrorum in ſuperiore fine dicti baculi, & cum ſigno armorum ipſius comitis in inferiore finis ejuſdem baculi ornatum, non obſtante quod idem nunc comes tempore ſuo ſeu prefati nuper comites aut aliquis alius qui dictum officium mareſcalli Angliæ ante hæc tempora habuerunt, baculum ligneum portare ſeu deferre conſueverunt.*

Now

Now as this office of earl marshal hath been diversly granted over, as you have heard, so hath this office of great chamberlain been diversly granted, not only in tempestuous times, but in halcion days, and in times of peace and tranquillity.

After the award made by King H. VIII. which he caused to be confirmed by act of parliament, and after the death of JOHN, earl of Oxford, party to the award, and JOHN, his son, father of EDWARD; either for that he was not so fit to exercise this great office, or upon some other occasion, King H. VIII. gave the said office, in the 32d year of his reign, to ROBERT, earl of Sussex, for life, with all fees, *&c.* which formerly the same King had granted unto THOMAS CROMWELL, earl of Essex, Pat. 32 H. VIII. 6 part. 3 Aug.

King EDWARD the sixth granted the same office afterwards to JOHN, earl of Somerset, viscount Lisle, during his life; which office formerly, as by the recital appeareth, was granted by the same King to EDWARD, earl of Hertford, and was by him formerly surrendered to the said King, Pat. 1. E. VI. part 6.

The same King E. the sixth, in the fourth year of his reign, granted the said office unto WILLIAM, marquis of Northampton, earl of Essex, and lord Parr, during life; which he had formerly granted unto JOHN, earl of Warwick, as by the recital appeareth, who had surrendered the same before unto the said King, Pat. 4 E. VI. part 1. 4 Feb.

What Queen MARY and Queen ELIZABETH did herein, it is unknown, and whether that JOHN, that made this deed in 4 ELIZ. was in possession or no, is matter in fact; but we do suppose him in possession, for the copy of the exemplification was untrue; for it is not late lord high chamberlain in the original deed itself, which we saw.

So that you have well understood, that when this honourable office came into the hand of one not so fitting, it came to the disposition of the Kings of this realm, as the original founders thereof; but we cannot find that any of the said officers made themselves any assignment thereof.

The fourth reason, drawn from the nature of an use, wherein the question will be, whether a man seized of such an honourable office in fee, may convey it over, or covenant to stand seized thereof to an use.

First, I must shew what an use is.

An use, by the consent of all our books, is a confidence and trust which *Cestuy que use*, that is, he that maketh the estate, hath for him and his heirs, in the other and his heirs, to whom the estate is given; and there must be a privity of estate between them.

For there be sundry persons that cannot stand seized to an use, especially where this privity faileth.

This confidence and trust, which maketh the use, is not issuing out of the thing given, but is collateral, and annexed to the person.

For the use is *usus fructus*, which is reserved to the giver, when he hath given away the property to another; for he hath neither *jus in re*, *neque jus ad rem*, but only a confidence; which, if it be broken, he hath no remedy but a *subpœna* in chancery.

There were two inventors of uses, fear and fraud; fear, in time of trouble and civil war, for saving their inheritance from forfeiture; and fraud, in time of peace, to defeat debts, wards, escheats, mortmains, *&c.*

The feoffee, or grantee in use, might destroy the use, by granting the thing to one that had no notice of the former use.

These things I am driven to set forth by way of introduction, to be the better apprehended.

All lands and inheritances local, as rents *in esse*, liberties, franchises, visible or local, may be conveyed by way of use.

But inheritances perſonal, which have no relation to lands or local hereditaments, cannot be conveyed by way of uſe, as annuities.

And this inheritance is only a perſonal and corporal ſervice, and therefore cannot be conveyed to an uſe.

Again, uſes cannot be raiſed of ſuch things, *quæ ipſo uſu conſumuntur*, as commons, ways in groſs, authority granted to a man and his heirs, to hunt in any park, chaſe, or foreſt.

As touching the inconveniences that would enſue thereof.

He may covenant to ſtand ſeized to the uſe of others, as joint-tenants, and ſo may bring in as many officers as he pleaſeth.

So he may covenant to ſtand ſeized to a future and contingent uſe, and ſo bring in an office incontingently.

So he may covenant to ſtand ſeized to the uſe of his laſt will.

Or with power of revocation, and ſo make and unmake this officer at his pleaſure.

Here be two diſtinct confidences, which juſtle one another, the King's confidence, and the *Ceſtuy que uſe*, his confidence.

The queſtion is not, what he hath done, but what he may do.

The remainder of this argument is wanting.

Die Jovis 30 *Martii*, 1626.

The counſel for the earl of Derby's claim to the office of great chamberlain, is to be heard to morrow morning.

Die Veneris 31 *Martii*, 1626.

The counſel for the earl of Derby, and the counſel for the lord Willoughby, being called for to be heard this morning, according to the order made yeſterday, the lord keeper declared, that he is informed by the lord Strange, that his father's counſel are of the houſe of commons, and cannot be permitted to come thence at this time. Whereupon the houſe was moved to reſolve of the competition to the title of the office of lord great chamberlain of England, between the heir male and the heir general.

And after much debate, and long conſiderations had, of the opinions and arguments of the judges; it was upon the queſtion agreed, That the ſaid office of lord great chamberlain, is come and deſcended unto the heir general of the laſt earl of Oxford.

The duke of Buckingham thereupon ſignified unto the houſe, that the King requires his counſel may be heard, touching his title and claim to the gift of the ſaid office.

And it was ordered and agreed, That the counſel of the earl of Derby, and of the lord Willoughby, ſhall be heard to-morrow morning, if they can be here; if not, then in the afternoon of the ſame day peremptorily.

Die Sabbati primo die Aprilis, 1625.

The counſel for the earl of Derby, and ELIZABETH, his wife, and the counſel of the lord Willoughby, did this afternoon argue the ſeveral titles of the ſaid ELIZABETH, and of the ſaid lord WILLOUGHBY, unto the office of lord great chamberlain of England; and they being withdrawn, it was agreed upon the queſtion, that the ſaid office is deſcended unto the lord Willoughby, as couſin and next heir unto HENRY, the laſt earl of Oxford, deceaſed.

And whereas the King hath required, that his counſel be heard for his claim and right unto the ſaid office, it was further ordered, That Mr. ſerjeant RICHARDSON, and Mr. ſerjeant CREW, ſhall confer with Mr. attorney thereof, (who is now ſick) and they to be heard for the ſame on Tueſday next, at nine in the morning, which day is peremptorily appointed for the ſame.

Die Mercurii quinto die Aprilis, 1626.

The certificate to be delivered the King, touching the earldom of Oxford, *&c.* and the office of great chamberlain of England was read *in hæc verba, viz.*

May it pleaſe your moſt excellent Majeſty,

WHereas upon the humble petition of ROBERT, lord Willoughby of Eresby, and ROBERT VERE, earl of Oxford, ſeverally preferred to your Majeſty concerning the titles of the earldom of Oxford, baronies of Bulbeck, Sandford, and Badleſmere, and office of great chamberlain of England, ſeverally petitioned for by theſe lords; by the one as heir male, and by the other, as heir general, to HENRY, late earl of Oxford, deceaſed.

Your Majeſty was graciouſly pleaſed, upon each of their petitions, to make this anſwer: That ſeeing theſe petitions did concern ſo great an honour and office of inheritance, and fell ſo opportunely during the ſitting of the high court of parliament, your Majeſty did think fit to take the advice of your lords and peers of your higher houſe of parliament, who having the judges with them for their aſſiſtance in any point of law which may ariſe. And therefore your Majeſty's pleaſure was, That we your lords and peers in parliament, ſhould call the competitors before us, and examine their titles, and certify your Majeſty what we ſhall find, together with our opinions thereof; whereupon your Majeſty would do that to each party which ſhould be juſt.

And whereas the right honourable WILLIAM, earl of Derby, and the lady ELIZABETH, his wife, in right of the ſaid lady, eldeſt daughter of EDWARD, late earl of Oxford, by their humble petition preferred to your Majeſty, deſired their title to the ſaid honours and dignities might alſo be taken into conſideration. And your Majeſty was alſo pleaſed to refer that petition alſo to this houſe, in ſuch manner as the other petitions were before referred.

According to your Majeſty's pleaſure thus ſignified unto us, we called all the ſaid lords competitors, and at ſeveral days heard their counſel learned on either ſide; and after long debate, we finding there did ariſe ſome points of law of difficulty, worthy the conſiderations of the learned and reverend judges, we deſired their advice therein; and they taking theſe points of law into their ſerious conſiderations, after deliberation of ten days, returned unto us this anſwer.

That for the title of earldom of Oxford, they were all of opinion, it doth belong to ROBERT DE VERE, as heir male of the ancient and honourable houſe of VERE.

That for the baronies, they are wholly in your Majeſty's hand, to diſpoſe at your own pleaſure.

DUGDALE's baronage, vol. 1. p. 200.

And the greater number of the judges did reſolve, That for the office of great chamberlain of England, it doth belong to the lord Willoughby, as heir general to HENRY, earl of Oxford, who was laſt ſeized of the ſaid office.

Upon which opinion of the judges, and upon deliberate conſideration of all which had been offered unto us on each party; we offer unto your Majeſty our humble opinions and advice, that the ſaid earldom may be declared by your Majeſty to appertain to the ſaid ROBERT DE VERE, and that he may be accordingly eſtabliſhed in that honour, to him, and to his heirs males, according to an act of parliament made *anno decimo ſexto* R. II.

That the ſaid office of great chamberlain of England, may be declared by your Majeſty, to appertain to the lord Willoughby, and his heirs, with a *ſalvo jure* nevertheleſs to your Majeſty.

All which we humbly ſubmit to your Majeſty's wiſdom and judgment.

This being read, and allowed of, theſe lords were appointed to deliver the ſame unto his Majeſty, *viz.*

The duke of Buckingham.
Lord preſident.
Lord ſteward.
Lord chamberlain.

The Barony of *GREY* of *RUTHYN.*

CHARLES LONGVILE, Eſq; Plaintiff.

ANTHONY, earl of Kent, Defendant.

Die Martis 10. *Nov.* 1640.

THIS day was read the petition of CHARLES LONGVILE, eſq; couſin and next heir of HENRY, earl of Kent, lord Haſtings and Ruthyn, deceaſed, touching his claim to the titles of lord Haſtings and Ruthyn, *&c.* And it was committed to the committee of privileges, and in the mean time the earl of Kent to have notice of it.

Die Veneris 27 *Nov.* 1640.

This day was read the petition of CHARLES LONGVILE, eſq; which he preſented to his Majeſty, and the reference from his Majeſty to this honourable houſe, as it followeth *in hæc verba.*

To the King's moſt excellent Majeſty.

The humble petition of CHARLES LONGVILE, eſq; couſin and next heir of HENRY, late earl of Kent, lord Haſtings and Ruthyn, deceaſed.

Humbly ſheweth,

THAT REGINALD GREY, your petitioner's anceſtor, whoſe heir he is, was ſeiſed to him, and his heirs, as of fee and right of the dignities of lord Haſtings and Ruthyn, that is to ſay, of the title of lord Haſtings by deſcent from ELIZABETH, his mother, daughter and heir to JOHN, lord Haſtings, and of the title of lord Ruthyn by deſcent from ROGER, lord Grey of Ruthyn, his father, and being ſo ſeiſed was divers times in the reigns of your Majeſty's royal predeceſſors king EDWARD III. ſummoned unto the high court of parliament by the name of REGINALD GREY of Ruthyn, and accordingly ſate therein, and of the ſaid titles and dignities died ſeiſed; and by divers meaſne deſcents the ſaid dignities deſcended unto EDMUND GREY, knight, who by reaſon thereof, was ſeiſed of the dignities as of fee to him, and his heirs, and being ſo ſeiſed, the ſaid EDMOND, by the name of EDMOND, lord Haſtings and Ruthyn, was by the letters patents of your Majeſty's predeceſſor king EDWARD IV. created earl of Kent, to him, and the heirs male of his body begotten; and ſhortly after of the dignities aforeſaid, died ſeiſed; after whoſe deceaſe the ſaid title of earl of Kent, and of lord Haſtings and Ruthyn, by divers meaſne deſcents did deſcend and come to ſir HENRY GREY, knight; couſin and heir of the ſaid EDMOND, by reaſon whereof he became of the ſaid dignities ſeiſed, that is to ſay, of the ſaid title of earl of Kent to him, and the heirs male of the body of the ſaid EDMOND, and of the ſaid title of lord Haſtings and Ruthyn, to him, and his heirs, and thereof died ſeiſed without iſſue of his body begotten, by means whereof, as the ſaid

title

title of earl of Kent is deſcended and come to the right honourable ANTHONY, now earl of Kent, as heir male of the body of the ſaid EDMOND, ſo the ſaid dignities of lord Haſtings and Ruthyn are of right deſcended to your petitioner, as rightful couſin and heir of the ſaid REGINALD, and nephew and next heir of the ſaid HENRY, earl of Kent, that is to ſay, ſon and heir of SUSAN, late wife of ſir MICHAEL LONGVILE, knight, ſiſter and heir of the ſaid HENRY.

May it therefore pleaſe your moſt excellent Majeſty graciouſly to give command for your petitioner's ſummons to this preſent parliament, there to ſit and enjoy the place and preheminencies to the ſaid dignities to him deſcended, and of right belonging, and your petitioner ſhall daily pray for your Majeſty's long and proſperous reign over us.

CHARLES R. his Majeſty's reference.

At our court at Whitehall, 25 November 1640. We are graciouſly pleaſed to refer this petition, and the conſideration and determination thereof, and of the petitioner's claim and title to the peers of our parliament. And our will and pleaſure is that juſtice and right be hereupon done.

Hereupon it was referred to the committee of privileges, and the lord Ruthyn to have notice of it, and a copy of the petition.

Die Lunæ 7 Decemb. 1640.

Mr. LONGVILE's cauſe ordered to be heard at the bar of the lords houſe, with council on both ſides.

Die Martis 8 *Decembris* 1640.

Whereas CHARLES LONGVILE, eſquire, hath petitioned his Majeſty to be reſtored to the honour of Haſtings and Ruthyn, which petition his Majeſty referred to this preſent parliament, and hath there been read before their lordſhips; it is thereupon ordered by the lords ſpiritual and temporal in parliament aſſembled, that the ſaid petitioner ſhall be heard with his council at the bar, in open court concerning his claim, on Monday the 14th of this inſtant December in the forenoon; and that the right honourable the lord GREY, who is conceived by their lordſhips to be intereſted in the ſaid claim, ſhall by virtue of this order take notice of the ſame, that hereby (both parties being heard) their lordſhips may proceed to ſuch judgment in the ſaid cauſe, as in their great wiſdoms ſhall ſeem meet.

Die Lunæ 14 *Decemb.* 1640.

Mr. LONGVILE's petition was firſt read in the houſe, the council on both ſides attending at the bar, then his Majeſty's reference was read, and the counſel of the earl of Kent made a long argument, and being late, Mr. LONGVILE's counſel was ordered to be heard the next day.

Mr.

Mr. SELDEN's argument for the earl of Kent.

JOHN, lord Haſtings.

JOHN, lord Haſtings. — ELIZABETH, ſoror & hæres JOHAN. domini Haſtings, com. Pembrochiæ. — ROGER, lord Grey.

REGINALD, lord Grey of Ruthyn.

REGINALD, lord Grey of Ruthyn.

JOHANNES GREY, miles, obiit in vita patris.

EDMUND GREY, earl of Kent.

ELIZABETH. — Sir ROBERT GREYSTOCK. — ANNE. — JOHN lord Grey of Wilton. — ANNA filia com. Rivers. — GEORGIUS com. Cant. — KATHERINA, filia WILL. HERBERT, com. Pembroch.

RICHARD, com. Cant. obiit ſine prole. — Sir HENRY GREY de Wreſt. — ANTHONY GREY de Branſpeth.

HENRY GREY. — GEORGE GREY.

REGINALD, com. Cant. obiit ſine prole. — HENRY, com. Cant. obiit ſine prole. — CAROLUS comes Cant. — ANTHONY, modo comes Cantiæ.

HENRICUS, comes Cant. obiit ſine prole. — SUSANNA. — Sir MICHAEL LONGUEVILLE.

CHARLES.

ROGER GREY married ELIZABETH, daughter and ſole heir of JOHN, lord Haſtings, and was called to parliament by writ, 18 EDW. II. and died 28 EDW. III. REGINALD, his ſon, was ſummoned to parliament by the name of REGINALD DE GREY DE RUTHYN, and died; and REGINALD, the ſon of REGINALD, was ſummoned by the ſame name, and had iſſue ſir JOHN GREY, who had iſſue EDMUND GREY; ſir JOHN GREY died; after REGINALD died; EDMUND was ſummoned to parliament, 20 HEN. VI. by the name of EDMUND DE GREY DE RUTHYN, chivaler. 5 EDW. IV. EDMUND was created earl of Kent, to him, and the heirs males of his body. He had iſſue GEORGE, ELIZABETH, married to ſir ROBERT GREYSTOCK, and ANNE, married to JOHN, lord Grey of Wilton, whoſe iſſue continued till of late. EDMUND died, GEORGE ſuc-

ceeded in the honours, and had iſſue by two wives: By his firſt wife ANNE, the daughter of RICHARD WOODVILE, earl Rivers, he had iſſue RICHARD; and by his ſecond wife KATHERINE, daughter of WILLIAM HERBERT, earl of Pembroke, he had iſſue ſir HENRY GREY, and ANTHONY GREY of Branſpeth. GEORGE died, and RICHARD poſſeſſed the honours, and ſat in ſix ſeveral parliaments, and died without iſſue. 14 ELIZ. REGINALD, ſon of HENRY, and grandchild of ſir HENRY, is declared earl of Kent, under which ſir HENRY, the petitioner claimeth as heir general, *prout, &c.* ANTHONY, now earl of Kent, claimeth the baronies as heir male.

The queſtion is, Whether they belong to the earl of Kent, or the petitioner?

The principal queſtion will be, Whether a barony by writ, being once involved into an earldom, may be afterwards transferred into another family, by a daughter and heir, and the earldom continue in the male line?

The petition of CHARLES LONGUEVILLE, couſin and next heir to HENRY, late earl of Kent, lord Haſtings and Ruthyn.

Sheweth,

That REGINALD GREY, your petitioner's anceſtor, whoſe heir he is, was ſeiſed to him and his heirs, in fee and right of the dignity of lord Haſtings and Ruthyn.

Prayeth to receive his writ of ſummons to ſit in this parliament.

To this my lord of Kent, who is heir male of the ſame REGINALD, and of EDMUND, firſt earl of Kent, ſaith, that the honours belong unto him.

1. He excepteth to the petition as miſtaken.

2. If the petition be not miſtaken, yet the ordinary rules of the common law, are not to be obſerved in this caſe, and if they were generally to be obſerved, the petitioner, nor himſelf, can have no right.

3. That he hath right to the dignities by the law and cuſtom of honour, and that the law of the land doth warrant his right.

1. The petitioner is miſtaken. For whereas the petitioner claimeth the baronies of Haſtings and Ruthyn; he ſaith, that the title of lord Haſtings, or ſtile thereof, is inherent in the blood, and was in the blood of REGINALD, lord Grey of Ruthyn. But the barony in reality, was the barony of Abergavenny, but he never ſat, nor was he ſummoned to parliament by that name. It had been material to REGINALD, lord Haſtings. For Abergavenny being a barony, *temp.* H. III. and the title and dignity of lord Grey, being created by writ 18 E. II. 109 years after, and the addition of Ruthyn added 28 E. III. to REGINALD, if he had ſat as lord Haſtings of Abergavenny, he had had precedency, and ſo had the ſucceſſors of him, if they had ſat in parliament by ſuch barony.

18 ED. II. ROGER GREY was firſt ſummoned to parliament by the writ directed ROGERO DE GREY. He married ELIZABETH, the ſole daughter and heir of JOHN, lord Haſtings of Abergavenny. He was ſummoned into all parliaments after, by the name of ROGERO DE GREY, and died 27 EDW. III.

28 EDW. III. REGINALD, the ſon of ROGER, and the heir of him and ELIZABETH, his wife, was ſummoned to parliament, and the writ directed REGINALDO DE GREY de Ruthyn, and not by the name of lord Haſtings. And if he had had the barony of Haſtings, he had had the precedency, as it happened *temp.* EDW. IV. in the caſe between ſir RICHARD FINES, then lord Dacres, and HUMPHRY DACRES. RICHARD was created lord Dacres, the barony of Dacres being void by the attainder of the then laſt lord Dacres, RICHARD, by virtue of his creation took the old place. And if a creation give him priority, much more ſhould REGINALD, lord Grey, have had priority, who was heir, if he had had more than the ſtile of lord Haſtings.

Note, That ELIZABETH was ſole heir, therefore, REGINALD had as good right as the petitioner, but he had not the barony, either for that, 1. It could not deſcend to a woman; or, 2. For that it drowned in the earldom of Pembroke.

ISABELLA, ſiſter and heir of ADOMER DE VALENTIA. — JOHN, lord Haſtings of Abergavenny. — ISABEL LE DISPENCER.

ROGER DE GREY — ELIZABETH. JOHN, lord Haſtings, of Abergavenny. HUGH.

LAWRENCE, lord Haſtings of Abergavenny, created earl of Pembroke.

JOHN, earl of Pembroke.

JOHN, earl of Pembroke, died within age, 13 R. II. without iſſue.

Note, That ELIZABETH had it by a *poſſeſſio fratris.*

As to the barony of Ruthyn, I do not find that ever ROGER had it. The caſtle and manor he had by a fine levied by his father JOHN, lord Grey of Wilton, 17 EDW. II. and it may be it was held by a barony. But it doth not follow that he was therefore a baron of parliament. It is a rule, that an honour or barony, or a tenure by barony, doth not enforce a concluſion that the poſſeſſed is a baron of parliament.

2 EDW. I. A partition was made of the manors and lands of Abergavenny, and Haveringworth, between HASTINGS and ZOUCH, the coheirs of GEORGE CANTELUPE; they were held by barony, and ſeverally allotted, yet the owners were not barons, for EVA, wife of WILLIAM CANTELUPE, was proprietor of the barony of Abergavenny, and had iſſue.

EVA — WILLIAM CANTELUPE.

GEORGE. JOAN. MILLICENT.

GEORGE died without iſſue, JOAN married HENRY, baron de Haſtings, and had Abergavenny, MILLICENT married to EUDO DE ZOUCH, and had Haveringworth. The partition made them not barons, for JOHN, baron de Haſtings, owner of the barony of Abergavenny, was never ſummoned to parliament by the name of lord Abergavenny, but lord Haſtings. REGINALD, lord Grey de Ruthyn, was his couſin and heir, and poſſeſſed that manor, but never had the title. REGINALD ſold it to WILLIAM BEAUCHAMP, who was after ſummoned to parliament, and held the honour and place, but by the King's ſpecial limitation. By the attainder of RICH. III. the caſtle and manor came to HEN. VII. Yet the NEVILS continued to have the honour of the barony, and it came to HENRY NEVIL, who, 29 ELIZ. had iſſue MARY, his ſole daughter, married to ſir THOMAS FANE, but ſhe never had the barony, although the matter became a judicial diſcuſſion in parliament.

The barony came not by the caſtle, or by tenure, but by writ, and the firſt ſummons of parliament was the year after the death of his father, who died 17 EDW. II. 18 EDW. II. ROGER was ſummoned to parliament, but not as lord Ruthyn, the ſummons was ROGERO DE GREY, and ſo he was ſummoned, clauſ. 19. EDW. II. m. 27. dorſ. and ſo 20 EDW. II. 1 EDW. III. 2 EDW. III. 3 EDW. III. 4 EDW. III. 5 EDW. III. and all the other parliaments 'till 27 EDW. III. ſo long as he lived.

Cl. 28 EDW. III. m. 26. came in the firſt mention of Ruthyn; it was upon this occaſion. ROGER being dead, REGINALD was his ſon and heir, and the lord GREY of Wilton was called REGINALD, ſo being two REGINALDS, the writ to the lord GREY of Wilton, was REGINALDO DE GREY, *ſeniori*, and to the other, REGINALDO DE GREY de Ruthyn, and ſo it was cl. 29 EDW. III. m. 8. *dorſo*, which was only a diſtinction of names, and not a real part of the honour; and ſince that time, the writs went ſo, both to that REGINALD, and his ſon REGINALD, and ſo to EDMUND, 'till 5 EDW. IV. that EDMUND was created earl of Kent. And after 6 EDW. IV. m. 1. EDMUND was ſummoned by the name of earl of Kent only, no mention being made of Haſtings nor Ruthyn.

Collection.

1. The right name of the honour is lord Grey.

2. The name of Ruthyn is only an addition upon the occaſion aforeſaid, introduced 28 EDW. III.

3. That Haſtings is only a ſtile or appellation, which went along with the other honours, but they never had place or voice in reſpect thereof.

2. The petitioner hath no right.

Admit the baronies real, and not appellations, and not conjoined to an earldom.

Admit the petition well, and not miſtaken, as to the dignities, yet the petitioner is barred to have them, for he is not heir to RICHARD, who once had them.

I confeſs the petitioner is heir general of the laſt earl HENRY, and ſo of CHARLES, his grandfather, and HENRY, and REGINALD, his great uncles, but as his claim is as heir general of the firſt REGINALD, 28 EDW. III. I muſt vary from him. I may admit him heir general to the firſt REGINALD, but not to thoſe dignities, for that if the rule of common law be ſtrictly obſerved, neither the petitioner, nor my lord of Kent, can claim them, as the caſe is.

The reaſon is, it is a rule in the common law, he that will make himſelf heir to an eſtate of fee-ſimple, muſt be heir to him who was laſt actually ſeiſed thereof. But REGINALD, the ſon of HENRY GREY, the ſon of ſir HENRY GREY, being of the half blood to RICHARD, earl of Kent, lord Haſtings, and lord GREY of Ruthyn, could not be heir to RICHARD, *ergo*, neither can the petitioner who claimeth under ſir HENRY, REGINALD, *&c.*

The pedigree is thus.

EDMUND, earl of Kent, lord Haſtings and Ruthyn.

ELIZABETH, married to the lord Greyſtock.	GEORGE.	ANNE, married to the lord GREY of Wilton.

RICHARD, by ANNE, the daughter of RICHARD, earl Rivers.	Sir HENRY GREY. ANTHONY GREY, by KATHERINE, daughter of WILLIAM HERBERT, earl of Pembroke.

RICHARD was earl of Kent, 20 HEN. VII. and actually ſeized of the honour, ſat in parliament 1 HEN. VIII. 4 HEN. VIII. 5 HEN. VIII. 6 HEN. VIII. 7 HEN. VIII. and 14 HEN. VIII. 1522.

He having ſat in ſix parliaments, could not but be actually ſeiſed and poſſeſſed of the honours, and then could not the ſame deſcend to ſir HENRY GREY, the petitioner's anceſtor. It being a rule in the firſt chapter of LITTLETON, ſect. 8.

That

That if a man be ſeiſed of land in fee ſimple, and hath iſſue a ſon and a daughter by one *venter*, and a ſon by another *venter*, and die, and the eldeſt ſon enter, and die without iſſue, the daughter ſhall inherit, and not the younger ſon, yet the younger ſon is heir to the father, but not to the brother. RICHARD, earl of Kent, lord Haſtings and Ruthen, ſat in parliament, and was in actual poſſeſſion thereof, and was of half blood to ſir Henry; therefore neither ſir HENRY, nor any claiming under him, can by the ordinary courſe of law inherit.

Object. Co. LITT. 15 *b.* & 3. Co. 42. *a.* RATCLIFFE's caſe. There can be no poſſeſſion of dignities, but ſuch as deſcendeth, as to be a duke, earl, baron, to a man and his heirs; and then the brother by the half blood, being heir to the father, ſhall inherit the dignity inherent to the blood, as heir to him who was firſt created noble.

Reſponſ. 1. This is my lord COKE's own collection, which under favour I may deny, having both authority and reaſon for it. 48 *aſſ.* 6. RALPH EVERDEN brought a writ out of the chancery, commanding the juſtices to diſcharge him of the oath of a juror at the aſſiſes, for that he was a baron; the juſtices examined if he held by barony, and if he and his anceſtors came to parliament as barons; and if ſo, it was allowed. By which it appeareth, that the coming to parliament is poſſeſſion, as 3 HEN. VII. 3. *Pere mort ſeiſi del advowſon en groſs, ſi eigne fits preſent, ceo fuit poſſeſſio fratris*, and the ſiſter ſhall inherit, if he preſent not, then the younger brother may inherit; yet the preſentment is not the advowſon, but the fruit of the advowſon. So the ſitting in parliament is the poſſeſſion and fruit of the barony.

Poſſeſſion may be had of that which is inherent in blood. Homage *aunceſtrel* draweth to it warranty and acquittal, if the lord have received the homage, *i. e.* if the tenant hath done unto the lord homage. And it is called homage *aunceſtrel*, becauſe of the continuance which hath been by title of preſcription in the tenancy, in the blood of the tenant; and alſo in the ſeigniory, in the blood of the lord. LITT. ſect. 143, 144. And if poſſeſſion can be had of homage *aunceſtrel*, which is to ſwear to be faithful and perform ſervices, much more of dignities with place in parliament, and privileges in commonwealth, as not to be arreſted, and not to be ſworn in juries.

EDMUND had iſſue two daughters, ELIZABETH and ANNE; and they cannot have the dignities, for they are not diviſible. 23 HEN. III. FITZ. *tit. partition.* 18. *Nota.* If the earldom of Cheſter deſcend to coparceners, it ſhall be divided between them as other lands, and the eldeſt ſhall not have the ſeigniory and earldom entire to herſelf, *quod nota*, adjudged *per totam curiam.* Co. LITT. 165. *a.* By the earldom, is underſtood the poſſeſſions of the earldom, for the dignity, the King ſhall have it in his power, for the incertainty, to confer upon which of the daughters he pleaſeth. And this hath been the uſage ſince the conqueſt, as it is ſaid. But where there is but one daughter, there the dignity ſhall deſcend to that one daughter; for there is no uncertainty: and ſo it was in the caſe of SAMPSON LENNARD, who married MARGARET, the only ſiſter and heir of GREGORY FINES, lord Dacre of the South, and in the caſe of WILLIAM lord Roſs. Vide ante p. 24. and p. 162.

2. There is no legal difference, as to this point of *poſſeſſio fratris*, between one heir and more coheirs. All I in this point of the argument labour for, is, that by the ordinary rules of common law, the petitioner is barred, and then we have no more to do with his petition.

Though the daughters cannot have it when they are married, but the King hath the diſpoſal, yet it is a bar to the petitioner; as if a man ſeiſed of lands in fee, hath two ſons, the eldeſt is attainted, and then the father dieth, the King ſhall have the land, and not the younger, for the elder is an impediment; but if the elder had died before the father, then the younger ſhould have had the lands by deſcent. DYER. 274. *pl.* 40, 41. So the two daughters, if the rule of law be obſerved, are a bar to the younger brother, though they have it not.

3. An uſe or truſt is a thing of ſuch a nature, as it is hard to come to poſſeſſion; yet ſeeing it hath got the reputation of an inheritance deſcendable, a *poſſeſſio fratris* will lie of it. Co. LITT. 14 *b.*

This is ſufficient to deſtroy the petitioner's title; but it will be ſatisfactory to ſhew that the earl of Kent hath good right and title to the dignities claimed: and therefore to give your lordſhips that ſatisfaction, I ſhall take this courſe.

To pretermit the civil law, *feud. lib.* 1. *tit.* 14. *de marchia,* which doth much conduce to my lord of Kent's title; for Dr. RIDLEY ſaith in his view of the civil law, par. 2. c. 1. ſect. 8. As in kingdoms, ſo in all dignities under kingdoms, the eldeſt brother is to be preferred before all his other brethren, and they ſucceſſively one before another, if there be no iſſue left of them that go before, and the male line is to be preferred before the female. To leave this, I ſay, I have ſufficient by the common law, to entitle my lord of Kent to his baronies, for theſe reaſons.

1. The law in caſe of deſcents is not bound to the ordinary courſe of deſcents. And that there be ſeveral courſes of deſcents, as deſcents according to cuſtom, which the common law taketh notice of, and the reaſon in deſcents of honours makes for him.

2. That this inheritance of honour is a ſpecial kind of inheritance in limitation, being created by writ, without expreſſion of any heirs, and yet it ſtandeth with the law, that the ſame go to the male line.

3. It is an inheritance raiſed upon a conſideration, which is executory, which none but the male line do perform, and therefore it belongeth to them.

4. That where an inferior honour doth annex with a ſuperior, it is either abſorpt, or doth wait upon the ſuperior, and ſo the ſtate.

5. That the cuſtom in caſes of honour is, and hath been, that inferior honours do wait upon the ſuperior; and if ſuch be the cuſtom, ſuch is the law; and if ſuch cuſtom be broken, it will make trouble and diſquiet.

1. That the law is not bound to adjudge courſe of deſcents from father to eldeſt ſon in lands, is moſt apparent; and there is no reaſon but the like may be in other particular caſes between other anceſtors, where a reaſonable cuſtom doth approve of it, and hath uſed it; and therefore LITTLETON, in his chapter of parceners by cuſtom, ſect. 265. ſaith, if a man be ſeized in fee of gavelkind lands, and hath divers ſons, and die, the lands ſhall deſcend to all the ſons equally; and the reaſon is ſect. 210. for that every ſon is as great a gentleman as the eldeſt, and may grow to greater honour and valour, if he hath any thing by his anceſtors, or otherwiſe peradventure he cannot ſo well attain to it.

LITT. ſect. 211. The youngeſt ſon ſhall inherit borough Engliſh lands; the reaſon is, for if he want father and mother, he is leſs able to help himſelf.

So as if there be an indifferent good reaſon for an alteration of the deſcent of inheritance, it may be altered from the ordinary courſe of law.

As the cuſtom of gavelkind and borough Engliſh is reaſonable, ſo the law doth take ſpecial notice thereof, as 1 E. IV. 6. The law doth take notice of the general cuſtoms as gavelkind and borough Engliſh, but not of particular cuſtoms; for the one goeth through the realm, and the other is the particular cuſtom of particular limits; and here, as I ſhall ſhew hereafter in this caſe, the cuſtom is in like caſes, for the inferior honours to wait upon the ſuperior, when we come to precedents.

There was at the common law an eſtate deſcendable only upon the males, before the ſtat. of Weſtminſter, 2. *de donis*; that made no alteration but in alienation.

And in point of honours, ſir JOHN FERNE, learned in the law of arms, collecteth out of good authors (of generoſity, p. 274.) that couſins deſcending from women are ſaid not to be of the family, the kindred and blood of the houſe is continued by them, but not the family. *Filii familiam paternam ſequentur quoad originem, quoad nationem, quoad honores.* Notwithſtanding, if the daughter be an heir to her anceſtor, then to her and her iſſues, ſhall deſcend the coat

armory, for ſhe is in that caſe (the male line being ended) called the image of the anceſtor, but ſuch a coat borne by her iſſue is called imperfect in bearing, ſince it is not borne by that family and name to which it did originally belong.

Where, 1. by theſe words, (the male line being ended) it appeareth ſhe ſhall not hold the arms, if any of the males continue.

2. The words of the family and name do imply the males, and this name of Ruthyn was ſettled in the name of Grey.

3. This is a ſpecial kind of inheritance, and therefore may have a ſpecial kind of deſcent.

It is a ſpecial kind of inheritance, for that it is created by writ, and without words of heirs, and as cuſtom hath made it an inheritance, ſo it will direct the deſcent and courſe of the inheritance.

LITTLETON, ſect. 1. ſaith, That the word heirs, make an eſtate of inheritance in all feoffments and grants; and yet that rule is not generally ſo to be underſtood, but that in certain extraordinary caſes it is otherwiſe. As if land be given to a man and a woman in frank marriage, they have an inheritance, and ſpecial entail, *i. e.* to the man and the woman, and the heirs of their two bodies begotten; ſo as if the man and woman have other children and heirs by former marriages, yet no other heirs can inherit thoſe lands ſo given, without the word heirs, but only ſuch as are within the ſpecial limitation and intent of the gift. 5 H. III. FITZ. *tayle.* 28. 4 H. III. FITZ. *formedon* 64.

Their dignities being created by writ without the word heirs, are a ſpecial kind of inheritance, and the law will marſhal the deſcent therein in ſuch ſort, that the honour ſhall deſcend upon ſuch heirs as are capable to perform the conſideration moving the writ; which conſideration was, to give advice and counſel in parliament; which no woman can do, but muſt be done by males.

It is an inheritance by virtue of theſe words, *vobis mandamus ſub fide & homagio quibus nobis tenemini.* No man ſhall do homage but he that hath an eſtate of inheritance, either in his own right, or in the right of his wife, *&c. ergo,* it is an inheritance. LITT. ſect. 90.

Before the ſtatute of Weſtminſter, 2. *de donis*; If land had been given to a man, and to the heirs males of his body, this was deſcendable upon all the heirs males, the ſtatute only took away the power of aliening by fine and feoffment. 7 Co. 34. *b.* 35. *a.*

This kind of inheritance thus raiſed by writ, is raiſed upon a conſideration executory; which none can perform but males.

The conſideration is greatly material in all the King's grants.

Here I meddle not with honours created by patent made to honourable women; the King, who is the fountain of honour, may, and often hath created honourable women by patent. Therein is a manifeſtation of his expreſs pleaſure, that it ſhall be ſo, and apt words of creation and words to enable the male iſſue in parliament to counſel.

But that a woman may have a creation by writ, I never heard of any, and it is difficult for that which in law was never done, to be done. If the King make any ſuch by writ, the iſſuing out of the writ, and directing it to ſuch woman by name, may ſhew his pleaſure is, that ſuch a woman ſhall have ſuch an honour; but this is no way our caſe. This writ was directed to a man, ROGERO DE GREY.

It is for advice and counſel, that is the conſideration of the writ. SPELMAN. Gloſſ. pag. 80. Quia, *&c.* ſuper quibuſdam arduis negotiis nos & regnum noſtrum cæteroſque proceres & magnates de eodem regno tangentibus, ſine veſtra & eorum præſentia nolumus expediri, &c. parliament. Weſtm. tenere & vobiſcum ſuper his colloquium habere volumus & tractatum, vobis mandamus in fide & homagio quibus nobis tenemini firmiter injungentes quod, &c. interſitis nobiſcum apud Weſtm. die menſis proxime futur. vel ſaltem infra terminum die ſubſequentis ad ultimum ſuper dictis negotiis tractaturi & veſtrum conſilium impenſuri, &c. & hoc nullo modo omittatis. Teſte meipſo, &c. So that counſel is the conſideration of the firſt writ, and ſubſequent counſel is the conſi-

deration

deration of all the ſubſequent writs, and that in parliament, where a woman ſubject was never ſeen to give counſel.

A conſideration is a cauſe or occaſion meritorious, requiring a mutual recompence in deed, or in law, DYER 336. pl. 34. As if an annuity be granted *pro conſilio impendendo*, if the grantee will not give counſel, the other may ſtay the annuity, for that he cannot have the thing for which the annuity was granted, 9 E. IV. 20. So it is, if the party which ought to give counſel be diſabled to do it; ſo it was objected in EMPSON's caſe, DYER 2. pl. 2. who was in priſon for treaſon, but there ruled to be no diſability, for he was able to give counſel notwithſtanding his impriſonment; but admitted, if he had not been able to give counſel, the annuity determined.

The conſideration is executory, and an executory conſideration is future and continual, as grant of an office and fee *pro exercitio ejuſdem*, if the office is determined, the fee is determined, DYER 336. pl. 34.

So here, if counſel cannot be had, the honour cannot be enjoyed. And it is clear that every baron of parliament is bound to give counſel. One ſitting in parliament ſatisfieth not the conſideration of the honour.

It hath fallen out, that the father hath been called by writ and not his heirs. REGINALDUS DE ARGENTINE, ſummoned 25 E. I. RALPH FASTFIELD ſummoned the ſame year.

Therefore ſeeing there ought to be a continual conſideration, and the petitioner cannot derive himſelf from ſuch an anceſtor as was within the conſideration of the creation of the honour; for it was never ſeen that a woman ſubject did ſit to give counſel in parliament, but iſſue males have altogether ſat there; and therefore this ſpecial inheritance is to follow the conſideration, which cannot be performed but by iſſue male, it being a rule in law, if lands be given to a man, and the heirs males of his body, who hath iſſue a daughter, and ſhe a ſon; the ſon ſhall not inherit, for that he cannot derive himſelf by the male line, LITT. ſect. 24. So here ſeeing the lady SUSAN, the petitioner's mother, could not ſit in parliament, neither ſhall he.

Object. It hath been uſual where a barony did fall upon a ſole daughter and heir, and a competent inheritance to ſupport the ſame, and a marriage without diſparity, that the inheritance hath gone to the ſon of that daughter.

Reſponſ. No difference in the reaſon of law, as to deſcents between the ſole daughter, and coheirs; but I confeſs, where a ſole barony not meeting with a greater honour, otherwiſe deſcendable, hath been in a man who left a ſole daughter and heir, it hath many times ſo fallen out, that the King hath conferred the honour upon the iſſue of that daughter; but that is *ex gratia regis*, not *ex vigore legis*; and it is rather a reſtitution or revival of an antient honour, than right of deſcent; as it happened in the caſe of GEORGE NEVIL, ſummoned to parliament by the name of lord Abergavenny, who was ſon of EDWARD NEVIL, lord Abergavenny, and of ELIZABETH, the daughter and ſole heir of RICHARD BEAUCHAMP, who died 9 H. V. and was earl of Worceſter, and lord Abergavenny by writ. In which caſe the earldom determined by the failure of iſſue male, and yet GEORGE NEVIL had not the barony in right of his mother ELIZABETH, for EDWARD, his father, husband of ELIZABETH, was firſt ſummoned by that name in his own right, and of the grace of the King, without naming his wife. So THOMAS, lord Berkley, who died 41 E. III. had iſſue THOMAS and JAMES, THOMAS had iſſue ELIZABETH, married to RICHARD, earl of Warwick, yet the barony went to JAMES.

Ante p. 82.

THOMAS, lord Berkley.

THOMAS BERKLEY. JAMES.

ELIZABETH. JAMES

JAMES had the barony, which if the heir female had had right, ſhould have gone to her.

The lord CROMWELL was created by writ and died, leaving MAUD, lady Willoughby, and dame JOAN, his heirs. This reſted in the King to diſpoſe, who conferred it upon ſir HUMPHRY BOURCHIER, who married JOAN, the younger ſiſter, and he had it in his wife's life-time. So as it appeareth that the King being the fountain of honour, doth permit and diſpoſe of honours to go to the heirs, or diſpoſeth them to the husbands or kindred, as he adjudgeth fit, yet this always in ſuch caſes, where there is no other who hath right to claim them. But yet it is particular grace; for if it had been *ex vigore legis*, that a ſole daughter and heir, or her iſſue by her marriage, without diſparagement, ſhould have the honour, then had REGINALD, lord Grey, the ſon and heir of ELIZABETH, the ſole daughter of JOHN, lord Haſtings, been ſummoned to parliament as lord Haſtings, and had priority.

This reaſon moſt proper to this caſe.

4. The fourth reaſon is, That it is abſorpt, or that *magis dignum trahit ad ſe minus dignum:* A barony inverted into an earldom ſhall always attend it.

Until the time of king E. III. this honour of an earl was the greateſt a ſubject attained unto. Sir JOHN DAVIS, in his Iriſh reports, 59 *b.* ſaith, they were *comites a comitando principem, ſummi proceres, & a rege proximi.* They had counties aſſigned them to govern, they were *judices ordinarii.* This order began preſently after the declination of the Roman empire, introduced into Germany by CHARLEMAIN, and brought into England by the Saxons.

Dukes were firſt created by E. III. EDWARD, the black prince. Marquis by R. II. ROBERT, earl of Oxford. Viſcount by H. VI. the lord BEAUMONT, 9 Co. 124. *i.* 125.

As earls were *a rege proximi*, ſo no doubt they did participate of the fountain from which it iſſueth.

The Queen granted to the earl of Rutland the office of ſtewardſhip of the manors of Mansfield, Bolſover, and Horſley, and no expreſſion of power to make a deputy. One queſtion was, if he could make a deputy or no, being an office of ſkill, fidelity, and diſcretion; and adjudged he might, by reaſon of the dignity of his perſon, being an earl, who is to be converſant in the affairs of ſtate, and for vicinity of blood, for they antiently were of the blood royal, and the King in all his appellations doth ſtile them *per nomen chariſſimi conſanguinei noſtri*, and they have high and great privileges, and a ſtewardſhip of a court-baron is too mean to execute, 9 Co. 49. *a.* count DE SALOP's caſe.

It is the nature of honour to abſorb all inferior honours in ſuperior of the ſame rank, be it in the greater or leſſer nobility. As if an obligation be made to an eſquire, who afterwards is made a knight, the writ ſhall not be *ad reſpondendum* J. S. *milit. alias dict.* J. S. *armigero, per* Danby, 32 HEN. VI. 29. So in the greater nobility, if a baron be made an earl, he ſhall be named only an earl.

So in the caſe of the dutchy of Lancaſter, PLOWD. 214. *a.* it is agreed, H. IV. was ſon and heir of JOHN of Gaunt, one of the ſons of H. III. and he was alſo ſon and heir of BLAUNCH, wife of JOHN of Gaunt, daughter and heir of HENRY, duke of Lancaſter, ſo that the dutchy came unto him by his mother; but after he had depoſed RICH. II. and aſſumed the regal ſtate, not only his honours of duke and earl, *&c.* were drowned, but the lands he held by his mother were, in him, in right of his crown; he could not be both duke and king.

The books to this purpoſe take a difference between an earl and a baron, 8 H. VI. 9. 10. A writ was *præcipe* J. S. *quod reddat* JOHANNI LOVEL, *militi, unum meſſuagium, &c.* FULTHORPE demanded judgment of the writ, for he is a baron, not ſo named in the writ. BABINGTON, there is a difference between a lord which is a baron and an earl, for where the writ is brought againſt an earl, or for an earl, he ought to be ſo named, for it is his name of dignity, and ſo it is adjudged.

39 Ed. III. 35. *In bre. de raviſhment de gard vers ſir* Gilbert Umfravil, it abated, for that he was an earl, *viz.* earl of Angus, not ſo named in the writ, for it was the name of his dignity, and he ought to be ſo named; and 14 Edw. III. Fitz. *bre.* 278, accords in the caſe of the earl of Glouceſter.

The dignity of a baron is drowned by the acceſſion of a greater honour, although the barony be greater in place and appellation, and this is proved *a poſteriori per effectus.*

Every baron had a place and voice in parliament, as a baron; A baron is created an earl; the King, who is the judge and fountain of honour and juſtice, doth never after ſummon him by the name of a baron, but of an earl only; which were a wrong unto him, if he had any reality of the barony in him, or more than the title and ſtile of appellation. But this is the courſe of all ſummons, and the King herein doth no wrong, for that the reality of the barony is abſorpt.

If a baron be made an earl, and the barony doth continue, then ſhould that earl have two voices or places in parliament; one as earl, and the other as baron. So of two, three, or more baronies, two, three, or more voices; but there is no ſuch thing; therefore it of neceſſity follows, that after the acceſſion of a greater or more eminent honour, there doth nothing of the inferior remain, but ſtiles and honourable titles of appellations. For it is a rule in law, 4 Co. 118. a. *Quando duo jura conveniunt in una perſona æquum eſt ac ſi eſſent in diverſis.* And if you do allow one perſon to give two voices by reaſon of a proxy, *a fortiori,* one perſon ſhould give two voices where he hath two real and diſtinct honours.

That the acceſſion of a greater honour doth merge and abſorb the leſs, is thus proved, in that, as an earl who hath baronies, hath no more privileges really in him, as exemptions of his perſon from arreſts, ſerving on juries, *&c.* ſo he hath no prejudices; for by the ſtat. of *mag. cart.* c. 2. the relief of an earl is 100 *l.* being the fourth part of his poſſeſſions by intendment, which ought to be 400 *l.* A baron's is a 100 marks, his poſſeſſions ought by intendment to be 400 marks, and this was the old common law, 9 Co. 124. b. Now if an earl continue his baronies really in him as diſtinct things, then ſhould he pay for both 166 *l.* 13 *s.* 4 *d.* for ſo by the ſame rule he ought to pay as for a knight's fee; for if a man hold his land by two knights fees, he ought to pay 10 *l.* to his lord for relief, 5 *l.* being the relief of one knight's fee. Litt. ſect. 112, 113. And the like for honours, if they were really in an earl; but ſuch a kind of payment was never ſeen, and ſurely it would have been, if the honours had been real.

And this doth anſwer the objection out of Acton's caſe, Co. 4. 118. *a.* put only by the counſel on the by. The ſtat. 21 H. VIII. c. 18. is to be taken ſtrictly, for if a biſhop be made or tranſlated into an archbiſhop, or a baron be made an earl, he hath both thoſe dignities, *& come eſt communement dit, quando duo jura conveniunt, &c. uncore il navera pluſors chapeleyns que archeveſque ou comte poient aver.*

As the ſtile of inferior dignities are only titular in the father, ſo are they in the ſon.

32 H. VI. 28, 29. Sir John Talbot brought an accord of debt againſt John Leversege, and it was *præcipe* Johanni Leversege, *quod reddat* Johanni Talbot, *militi, ſeniori filio* Johannis Talbot, *comitis Salopiæ, &c.* Exception was taken to the writ, for that the father was lord, and the ſon no way lord; for that the ſon ſhall not be exempted from *capias,* he ſhall be ſworn on juries, and tried by a common jury, as is daily ſeen, which proves the ſon was not lord.

The King doth call the eldeſt ſon of an earl to parliament by ſummons, and in the name of the honour of barony of his father, and alloweth him that place, and he really hath it. If the honour were in the father, this could not be, for then the King ſhould deprive the father thereof, which were a wrong unto him,

or it were but a created baron, and then the place he could not have, *vid.* 31 HEN. VIII. *c.* 10. But this doth ſtand with uſe and cuſtom, and therefore with law; and therefore it is apparent that the reality of the inferior honours do not continue after the acceſſion of a ſuperior.

Object. The earldom and the baronies are two diſtinct things, the earldom in Kent, and the baronies in Wales.

Reſponſ. I know no caſe in law, either of lands, or profits out of lands, will parallel this caſe; the reaſon is, although the honours be ſeveral in reſpect of time, eſtate, or place, yet they are all conjoined in one blood, and it were not enough to ſay, becauſe the barony of Haſtings came by a woman, it ſhould go by a woman. The reaſon is, for that a barony when it doth fall, or come to any perſon, it doth ennoble the blood; and as my lord COKE on LITT. 15. *b.* ſaith, The dignity is inherent in the blood, and the blood being ennobled, it is to deſcend as the blood deſcendeth; and as the eldeſt brother is more worthy of blood than the younger; for if the middle brother purchaſe, and die without iſſue, the land ſhall deſcend to the eldeſt, and not the youngeſt, for that the eldeſt *eſt pluis digne del ſangé*; ſo the male line is to be preferred before the female, ſo long as that male line doth laſt, in which the honour is coined; for it is more worthy of blood; and the rather, for that the honours of an earl and a baron are but of one nature, and differ only in priority and degrees.

A maſter of arts in the univerſity is a degree; he comes to be a doctor in law or divinity, his degree of that he had before is drowned in the higher, and he is no more to be called a maſter of arts. So an utter barriſter at law, and a reader of the law is called to be a ſerjeant, which is a farther degree, it is *ad ſtatum & gradum*, he is no more ſaid to be a barriſter, but a ſerjeant at law; but theſe may ſeem to illuſtrate, but will not come home to the caſe; for a man may give over his profeſſion, but not his blood, without the blot of attainder. *Per attainder ſon ſang eſt corrupt, il eſt devenus ignoble*, and his dignity is determined, 4 Co. 118. *b.*

Object. *Les baronies ſont en fee, & le earldom en tail*, the fee cannot drown in the entail.

Reſponſ. The fee cannot drown in the entail, but the fee may be ſurrendered to the King.

If a man be ſeized of lands in fee-ſimple, he may ſurrender to the King, he is lord paramount of all.

An implied act will amount to a ſurrender, as if tenant for years accept a new leaſe, or another eſtate, this is a ſurrender in law.

So if a man that is noble will accept another degree of nobility, whereby his blood may be further ennobled, this may amount to a ſurrender, and ſurely ſome ſuch conſtruction is to be made thereof, for that no inferior honours have parted from ſuperior after they have been in one perſon, 'till the ſuperior be ſpent and determined, can never be ſhewn.

5. The cuſtom, and therefore the law in caſes of deſcent of honours, is, when a barony by writ is once involved into an earldom, it ſhall wait upon the earldom, and may not after be transferred into another family, by a daughter and heir, ſo long as the earldom doth continue in the male line.

This point is rather matter of fact and precedent than of law; the law doth follow the fact.

A cuſtom is a reaſonable act iterated, and continued time out of mind of man, DAV. 32. *a.* as borough Engliſh and gavelkind; ſo are other cuſtoms, *quia conſuetudo ex certa cauſa rationabili uſitata privat. communem legem.* LITT. ſect. 169. Cuſtom of the court, maketh the laws of the court, 1 E. IV. 6.

This hath been the cuſtom in caſes of honour.

In caſes of ſingle heirs, 1. COURTNEY, earl of Devon. 2. FITZ-ALAN, earl of Arundel. 3. MANNERS, earl of Rutland. 4. CLIFFORD, earl of Cumberland. 5. RATCLIFFE, earl of Suſſex. And in caſes of coheirs, 1. MICHAEL DE LA POLE, earl of Suffolk. 2. Arundel, Oxford, Northampton, Shrewsbury, Derby.

I leave

I leave the precedents to be ſtudied by the officers of arms.

But becauſe I find my lord COKE in his LITT. 165. *a.* doth cite the lord Dacre's caſe, and the lord Roſs's caſe, I will anſwer them.

SAMPSON LENNARD, married with MARGARET, the only ſiſter and heir of lord Dacre of the ſouth, and heir of GREGORY, lord Dacre, and had the dignity. I ſay it was *ex gratia regia*, not *ex vigore legis*, for the reaſon before. And it was a ſingle barony, and not conjoined to an earldom as theſe baronies are.

The caſe of my lord Roſs maketh ſtrongly for my lord of Kent. The caſe, and the determination of it is thus:

Sir WALTER ESPECT, lord of Hamlake, *alias* Hemſley, in Yorkſhire, died 1153. *anno* 18 STEPHANI *regis*. He gave his ſiſter ADELINE in marriage with PETER DE ROOS, and the manor and caſtle. PETER, became lord Roos of Hamlake. EDWARD DE ROSS, his grandchild, married ROSE, the heir of Truſbut, and was lord of Trusbut-Ragbie. 1 E. IV. THOMAS, lord Ross, was attainted for adhering to H. VI. 1 H. VII. EDMUND, the ſon of THOMAS, was reſtored, and died without iſſue, having two ſiſters; ELEANOR, married to ſir ROBERT MANNERS, and ISABEL, married to ſir THOMAS LOVEL, who died *ſine prole*.

Sir ROBERT and ELEANOR had iſſue ſir GEORGE MANNERS, who was ſummoned to parliament, and had iſſue THOMAS, lord Roſs of Hamlake, who, 17 H. VIII. was created earl of Rutland, to him, and the heirs males of his body; THOMAS had iſſue EDWARD and JOHN; EDWARD had iſſue ELIZABETH, his only daughter, who was married to the lord BURLEIGH, and had iſſue WILLIAM, called lord Roſs, and died. JOHN ſucceeded in the earldom, had iſſue ROGER, FRANCIS, and GEORGE; JOHN and ROGER died.

The queſtion was between CECIL and FRANCIS.

July 1616, the late King determined the queſtion thus:

He ordained WILLIAM CECIL to be lord Roſs, without addition of Ham-
Ante p. 172. lake, and to have the antient place of the lord Roſs in parliament and other aſſemblies, and the earl of Rutland to be lord Roſs of Hamlake, Trusbut, and Belvoir, and his ſon and heir, according to the laudable cuſtom, to enjoy the name of lord Roſs of Hamlake, Trusbut, and Belvoir.

So that, 1. It was rather an ordination of a new honour, than a determination of the matter with the ſon of the lord Burleigh, for there was no ſuch honour as lord Roſs, without addition.

2. If he had right to the barony of Roſs, he had as good right to the barony of Trusbut, but that reſted no ways touched upon.

3. It was a new creation; for either the barony of Roſs, and of Roſs of Hamlake, are one or divers; if divers, then Roſs was a new creation; if one, then two men had it, and that was impoſſible; therefore it muſt needs be a new creation, and then the old reſted in the earl of Rutland, and yet doth. And ſo I ſay this may do with my lord of Kent.

Die Martis 15 Decemb. 1640.

This day Mr. LONGUEVILE's counſel was heard, which being done, the counſel on the earl of Kent's ſide did move the houſe for further time to be given, alledging that the pedigree was falſe and miſtaken in ſome places; thereupon it was ordered, that counſel on the earl of Kent's ſide do make their exceptions in writing to the pedigree of the ſaid CHARLES LONGUEVILE, eſq; by Saturday following, and deliver them to the counſel for the other ſide; and it was ordered, That the earl of Kent ſhall be allowed time, to Decemb. 29. to make good his exceptions unto the ſaid pedigree by his counſel at the bar.

Die

Die Veneris 18 *Decemb.* 1640.

It is this day ordered by the lords ſpiritual and temporal in parliament aſſembled, upon the humble petition of ANTHONY, earl of Kent, lord Grey of Ruthyn, Haſtings, and Waiſford, that the officers of arms do forthwith aſſiſt the ſaid earl of Kent, and CHARLES LONGVILE, eſq; for the perfecting and true ſtating of their pedigrees; and it is further ordered, that the ſaid earl of Kent ſhall deliver his exceptions, by his counſel, to the ſaid pedigree unto the counſel of the ſaid Mr. LONGVILE, upon Monday next, being the twenty firſt of this inſtant December.

Die Martis 29 *Decemb.* 1640.

This day the earl of Kent's counſel was heard at the bar, and a long argument was made in behalf of the ſaid earl by ſerjeant ROLLES; whereupon Mr. LONGVILE's counſel deſired time to anſwer 'till next morning, which was ordered.

Serjeant ROLLS's argument for the earl of Kent.*

Whether a barony by writ, being once involved into an earldom, may be afterwards transferred into another family by a daughter and heir, and the earldom continue in the male heir.

Argument againſt its going out with the daughter and heir.

CONCERNING baronies inveſted into earldoms, I preſume no one precedent can be produced, by which it may appear, that the daughter and heir of an earl, being married into another family, hath carried away any baronies out of the earldom, if the earldom hath continued in the heir male; and if to this time there hath never been precedent for it, it muſt needs ſeem ſtrange, why it ſhould be now drawn into queſtion; for if a barony by writ be no ſtate in fee (as directly it is not) then can there be no colour of right, and if there be no precedent, then what cauſe or expectation of grace, eſpecially in this caſe, where the King hath already declared himſelf by his writ to the heir male.

The heir male in fortifying his title, ſtandeth to the juſtification of this ground, and alledgeth that baronies once inveſted into earldoms are merely titulary, and have loſt their ſtrength and vigour, as being the leſſer, are eclipſed and darkened in the brightneſs of the greater, and remain now as ornaments, rather to enrich and garniſh their ſtiles with honourable titles of appellation, than with any real or eſſential matter.

There are two kind of lords, the one real, which are peers of the realm and lords of parliament, which, by the laws of the land, enjoy ſeveral immunities and privileges.

The other titulary, which have only the bare appellation of lords, taking their denomination either from baronies inveſted into earldoms, or elſe becauſe they are ſons of dukes and marquiſſes, or ſons and heirs apparent of earls, which titles they enjoy by the courteſy of the law of honour.

* This argument is alſo in the Bodleian library at Oxford in the Aſhmolean collection, 7351, 862. p. 412.

That ſeveral titles and dignities of honour, have accrued into earldoms by marriage, is moſt apparent, and that in all ages and times, and ſo have been of grace permitted to reſt in thoſe earldoms, as ornaments, and illuſtrious only to beautify their greater honours, but that they have ever been transferred again, by daughters and heirs into any other families, and the earldom continue in the male line, and the heir male deſcended of thoſe baronies, can never be proved.

That baronies once inveſted into an earldom, have loſt their reality it is plain, for if they be real, they are to be found in the father or the ſon, but they are not to be found in the father, neither in the ſon, therefore they have loſt their reality.

If an earl hath by marriage obtained into his earldom ten titles of barony, more or leſs (as many antient earls at this day have) what immunity, or privilege, hath that earl, either in his perſon, or in his eſtate, or in parliament, or what privilege hath his children more than another earl, who hath only one bare barony in him; ſurely, I think, it will be granted of all, that he hath none; by which it may plainly appear, that thoſe dignities are only titulary, and not real, they are meerly honourable, illuſtrious, and nothing elſe.

The King calls the ſon and heir of an earl to the parliament, as at this day many are, the cuſtom is, that being ſo called, he is placed in parliament according to the antiquity of his father's barony, by which he is called: If this barony were really in the father, how then could the King call the ſon into that barony, and ſettle him in that antient place, without a reſignation from the father, being alive.

If an earl ſhould marry with the daughter and ſole heir of an antient baron by writ, and by her ſhould have divers ſons, and that ſhe ſhould eſtate her ſecond or third ſon, into her chief, or principal ſeat, deſcended from her father; I think none would deny, but that the King might, at his pleaſure, confer the title and dignity of honour upon that younger ſon, and that it were abſolutely in the power of the King to do ſo.

If the heir general will contend for a barony inveſted into an earldom, it muſt be only for the title and appellation, for there is no eſſential barony due to the ſon and heir of an earl, except the King call him by writ, much leſs to the daughter; ſo that the conteſtation muſt not be betwixt the heir male and the heir general, but betwixt the King, and the heir general.

But ſince the queſtion and challenge by the heir general is for baronies by writ, inveſted into an earldom, and that baronies ſo inveſted (as is pretended) ought to deſcend to the heir general, although the earldom continue in the heir male, and the heir male deſcended as well of thoſe baronies, as the heir general; it will be very requiſite that the heir general ſhould produce precedents in the very point, or elſe the queſtion is grounded upon a very weak foundation; precedents (in all matters of this nature) being the beſt rule to determine the queſtion; for titles of honour are chiefly to be determined by the royal prerogative of the Prince, according to the moſt uſual and exact precedents in ſuch caſes uſed, and are not at all to be governed by the courſe of the common law, as in the caſe of the earl of Arundel and the earl of Devonſhire, for proceeding in parliament in the time of king HENRY VI. It appears, that after all proofs were produced on both parts, the matter was referred to the judges of the common law; but they (as the records ſpeak) ſaying and declaring, after their conceits, that it is matter of parliament, belonging to the King's Highneſs, and to his lords ſpiritual and temporal in parliament, by them to be decided and determined.

Precedents.

VINCENT, fol. 559.

VINCENT, fol. 30.

And hereupon the King and the lords determined, that he ſhould have his place in parliament, and the King's counſel, as earl, by reaſon of the caſtle, *&c.*

And ſince precedents in caſes of this nature are the beſt rules to guide and direct, and that, I preſume, none will be produced by the heir general, I ſhall produce ſome which I think will be very material unto the point in the behalf of the heir male.

HUGH COURTNEY was ſummoned to parliament in the time of EDW. I. as lord COURTNEY, and his ſucceſſors until king EDW. III's time, admitted HUGH COURTNEY earl of Devon; his iſſue lineal failed in JOHN COURTNEY, earl of Devon, ſlain at Tewkſbury; and JANE, or JOAN, wife to ſir ROGER CLIFFORD, knight, was found his ſiſter and heir: Nevertheleſs, neither the ſaid ROGER CLIFFORD, nor CHARLES, his ſon, nor EDWARD, the ſon of CHARLES, aſſumed the title of lord Courtney, but EDWARD COURTNEY, the next couſin and heir male, enjoy'd the title, both of earl of Devonſhire and lord Courtney.

CAMB. fol. 115. in his book of noble-mens deſcents. VINCENT, fol. 161. 163. CLIFFORD.

Sum. ad parl. 27 EDW. I. 28 EDW. I. — HUGO DE COURTNEY, 8 EDW. II. — Clauſ. de eodem anno in dorſo, m. 16.

Clauſ. 9 EDW. III. m. 35. dorſo. VINCENT, p. 197. — HUGO COURTNEY, nomen comitis Devon. aſſumpſit per mandatum Regis, EDW. III.

HUGO, comes Devon.

EDWARDUS, dominus Courtney.

EDWARDUS, comes Devon.

HUGO, comes Devon. — HUGO COURTNEY de Hackam, miles.

Dominus de Ockhampton, VINCENT, p. 161. — THOMAS, comes Devon, ob. 36 HEN. VI. — HUGO COURTNEY, mil. — CAMB. p. 208. King HENRY VII. advanced EDWARD COURTNEY, the next heir male to the honours of his progenitors.

ANNA (JANE) uxor WILL. KNEVET, poſtea ROG. CLIFFORD.

THOMAS, comes Devon, decollatus Eboraci, 4 EDW. IV.

HEN. comes Devon, decollat. Sariſbur. 11 EDW. IV.

JOHANNES com. Devon, cæſus apud Teuksbury, 12 EDW. IV.

EDW. reſtitutus com. Devon, per H. VII. 1 H. VII.

JOHN FITZ-ALAN, earl of Arundel, and lord Maltravers, left iſſue HUMPHRY, earl of Arundel, and lord Maltravers, which HUMPHRY died 16 HEN. VI. without iſſue, and AMICIA, his ſiſter, married to ſir JAMES of Ormond, knt. who was found his only ſiſter and heir, yet never challenged the titles of lord Maltravers, Fitz-Alan, Clun, *&c.* but left them to WILLIAM, earl of Arundel, her uncle, who was found to be the next couſin and heir male; from whom all the ſaid honours, titles, and dignities, rightfully deſcended, and reſt now in the perſon of the right honourable THOMAS, earl of Arundel and Surry, earl marſhal of England.

JOHANNES,

JOHANNES, filius ALANI, dominus de Clun. — ISABELLA, ſoror & cohæres WILLIELM. DE ALBINI, comitis Arundel.

JOHANNES FITZ-ALAN, comes Arundel.

JOHANNES, comes Arundel.

RICHARDUS, comes Arundel, obiit 30 EDW. I.

EDMUNDUS, comes Arundel, decollatus 20 EDW. II.

RICHARDUS, comes Arundel, obiit 50 EDW. III.

JOHANNES MALTRAVERS ſum. ad Parl. 1 EDW. III.

RICHARDUS, comes Arundel, decollatus RICH. II.

JOHANNES FITZ-ALAN.

ELEONORA, filia & hæres JOHANNES dom. Maltravers.

JOHANNES, ob. vita patris.

JOHANNES, dominus Maltravers.

THOMAS, comes Arundel, ob. ſ. pr. 5 H. V.	JOHANNA, uxor WILLELMI BEAUCHAMP, dom. Bergav.	ELIZABETHA, uxor THOMAS MOUBRAY D. Norff.	MARGARETA, uxor ROULANDI LENTHAL, mil.	ALICIA, uxor JOHANNIS CHARLTON, dom. Powis.

Declaratus comes Arundel, in parl. 11 H. VI. VINCENT, p. 30.

1 JOHANNES, comes Arundel, obiit 13 HEN. VI.

2 WILLIELMUS, comes Arundel, ob. 3 H. VII.

HUTFRIDUS, comes Arundel, obiit ſine prole 16 HEN. VI.

AMICIA, uxor JACOBI BUTLER, comitis Ormond, æt. 14. 16 H. VI. obiit ſine pr. VINC. p. 595.

THOMAS, comes Arundel, obiit 16 HEN. VIII.

Clauſ. 16 H. VI. JACOBUS DE ORMOND, miles, qui duxit in uxorem, AMICIAM, ſororem & hæredem HUMFRIDI, filii & hæredis JOHANNIS, comitis Arundel, & MATILDIS, uxoris ejus, filiæ ELIZ. quæ fuit uxor ROB. LOVELL, & conſang. & hæredis ejuſdem ELIZ. *&c.*

EDWARD MANNERS, earl of Rutland, died the 29th of queen ELIZ. having iſſue ELIZABETH, his daughter and ſole heir, married to WILLIAM CECIL, earl of Exeter, by whom he had iſſue WILLIAM CECIL, commonly called lord Roſs; which notwithſtanding JOHN MANNERS, earl of Rutland, brother and heir male, retained all thoſe ancient baronies of lord Roſs of Hamlake, Truſbut, and Belvoir, and ſo did ROGER, earl of Rutland his ſon, and after his death without iſſue, FRANCIS, earl of Rutland, his brother and heir male, and after his death, GEORGE, earl of Rutland, brother and heir male to FRANCIS.

Betwixt which FRANCIS, earl of Rutland, and WILLIAM CECIL, grew a controverſy *anno* 1616, for the baronies inveſted into that earldom; FRANCIS, then earl of Rutland, queſtioning the ſaid WILLIAM, for taking upon him the title of lord Roſs, being a barony inherent to him, by being involved into that earldom; the matter was brought to a publick hearing before the lords commiſſioners for the office of earl marſhal of England, and deliberately argued by their counſel on both ſides; after which debate, and certificate made by the aforeſaid lords commiſſioners to his Majeſty, his Majeſty declared, and did ordain the ſaid WILLIAM CECIL to be lord Roſs, without any addition, and to have the ancient place of the lord Roſs in parliament, and other aſſemblies; and the earl of Rutland to be lord Roſs of Hamlake, and his ſon and heir, according to the laudable cuſtom of England, to enjoy the name of lord Roſs of Hamlake, Truſbut and Belvoir, which he immediately did, and at this day the preſent earl of Rutland doth, as may appear by the plate ſet up at Windſor, for the ſaid FRANCIS, earl of Rutland, and his yearly eſcutcheons conſtantly in his time uſed at St. GEORGE's feaſt.

VINC. fol. 437.

HENRICUS, comes Rutlandiæ, dominus Roſs de Hamlake, &c.

2	1
JOHANNES, comes Rutlandiæ, dominus Roſs de Hamlake, &c.	EDWARDUS, comes Rutlandiæ, dominus Roſs de Hamlake, obiit 29 ELIZ.

1	2	3	
ROGERUS, com. Rutlandiæ, ob. ſine prole.	FRANCISCUS, com. Rutlandiæ, dominus Roos de Hamlake.	GEORGIUS, com. Rutland. dominus Roos de Hamlake, ſuperſtes anno 1640.	ELIZABETHA, ſola filia & hæres, uxor WILLIELM. CECIL, filii & hæredis THO. BURLEIGH.

CATHERINA, uxor GEORGII, ducis Buckingham.

WILLIELMUS, dominus Roos, obiit ſine prole anno 1618.

But in this declaration of his Majeſty's, haply ſome queſtion may ariſe, and it may be urged by the heir general, that this decree maketh altogether for her, and againſt the heir male; and I muſt confeſs, the manner of the penning of it is ſtrange, and done with as much advantage in the behalf of the heir generas, as might be; and no marvel, for it was drawn by Mr. ſecretary LAKE, whoſe daughter was married to the ſaid WILLIAM CECIL, lord Roſs; but upon more clear conſideration, it will plainly appear, that whereas Mr. CECIL is declared to be lord Roſs, without any addition, that muſt needs be *de novo*; and after that he ſhall have the antient place of lord Roſs without any addition; I think none know where that place can be found; ſo that what was granted to this lord Roſs was both new and ſtrange: But in the other part of his Majeſty's declaration for the earl of Rutland, his Majeſty declares the ſaid earl of Rutland to be lord Roſs of Hamlake, and his ſon and heir to enjoy the name of lord Roſs of Hamlake, Trusbut, and Belvoir, according to the laudable cuſtom of England; ſo that it appears plainly, that the earl of Rutland had all the ancient baronies involved into this earldom, ſettled upon him and his iſſue, according to the laudable cuſtom of England, which will as well include the place, as the titles.

It will not be amiſs to ſhew ſomething in the ſtrangeneſs of this declaration, in the behalf of Mr. WILLIAM CECIL, lord Roſs, conceiving the place of lord Roſs, which by the heir general muſt be conceived to be above the lord Roſs

of Hamlake, or elſe it is not known where it is; now if the eldeſt ſon of the earl of Rutland, who is lord Roſs of Hamlake, and the eldeſt ſon of the earl of Exeter, who is lord Roſs without addition, ſhould have met in any place, I preſume, the earl of Rutland's ſon and heir would not give place to the earl of Exeter's ſon and heir, notwithſtanding this declaration; nor could it ſtand with the laudable cuſtoms of England, he being the antienter earl's ſon; neither do I believe the King intended any ſuch matter, at the making of this declaration, ſo that then in all aſſemblies, he could not have the ancient place of the lord Roſs, as that declaration ſeems to import. And if theſe two lords ſhould have been both called to parliament, and that a queſtion ſhould have happened concerning their places, the lord Roſs of Hamlake could eaſily ſhew, where the place of the lord Roſs of Hamlake had conſtantly been, but where the place of lord Roſs without addition ſhould be, none could ſhew.

MUSEUM S.S.B. BRITANNICUM

ROBERTUS DE ROOS, ſepultus apud Kirkham.

Clauſ. de eiſdem annis. Sum. ad parl. 25 & 27 Edw. I. & uſque 1 Edw. II.

WILLIELMUS DE ROOS. — ISABELLA, filia & hæres WILLIELMI DE ALBINI, domini de Belvoir.

WILLIELMUS DE ROOS.

1 WILLIELMUS, obiit in terra ſancta ſine prole.

2 THOMAS DE ROOS, ſepultus apud Rievaulx.

1 JOHANNES, obiit in terra ſancta ſine prole.

2 WILLIELMUS DE ROOS, obiit apud Belvoir, & ibi ſepultus anno 1314.

1 JOHANNES, obiit ſine prole.

2 THOMAS DE ROOS, obiit 9 HEN. VI.

THOMAS DE ROOS, obiit anno 1461.

EDMUNDUS, obiit anno 1508, ſine prole.

ELEONORA, ſoror & cohæres, uxor ROBERTI MANNERS, mil.

GEORGIUS MANNERS, obiit anno 1513.

THOMAS, creatus comes Rutlandiæ, 18 Junii, 17 H. VIII.

GEORGE, earl of Cumberland, who died anno 1605. had iſſue two ſons, *viz.* FRANCIS and ROBERT, and one ſole daughter, firſt married to RICHARD, earl of Dorſet, and after to PHILIP, earl of Pembroke and Montgomery; her brothers FRANCIS and ROBERT dying without iſſue, ſhe became ſole heir, and hath petitioned for the barony of Clifford; nevertheleſs FRANCIS, earl of Cumberland, brother and heir male to the ſaid GEORGE, did retain and enjoy the ſaid titles and dignities, and his ſon and heir HENRY, now earl of Cumberland, the like, whoſe ſon and heir * now ſitteth in parliament in right thereof.

Query, * HENRY had no ſuch ſon.

ROBERT. CLIFFORD, ſum. ad parl. 27 EDW. I. claſ. de eodem anno in dorſo.

HENRICUS CLIFFORD, comes Cumbriæ, creatus 18 Junii, 17 HEN. VIII.

HENRICUS, comes Cumbriæ, obiit anno 1569.

1 GEORGIUS, comes Cumbriæ, obiit anno 1605.

2 FRANCISCUS, comes Cumbriæ, anno 1640.

FRANCISCUS, ROBERTUS, } ob. ſ. p.

ANNA, uxor RICH. SACKVILE, comitis Dorſet, poſtea PHILIPPO, comiti Pembr. & Montgom.

HENRICUS, dominus Clifford, ſuperſtes 1640.

ROBERT, earl of Suſſex, lord Fitzwalter, *&c.* had iſſue HENRY and HUMPHRY; HENRY was earl of Suſſex, and had iſſue HENRY, earl of Suſſex, and FRANCES, a daughter, married to ſir THOMAS MILDMAY; HENRY had iſſue ROBERT, who died without iſſue, ſo that EDWARD, now earl of Suſſex, ſon and heir of HUMPHRY aforeſaid, is couſin and heir male, and enjoyeth the titles of lord Fitzwalter, Egremond, *&c.* notwithſtanding ſir HENRY MILDMAY, knt. and baronet, ſon and heir of ſir THOMAS MILDMAY, knight and baronet, ſon and heir of the ſaid FRANCES, daughter to the aboveſaid HENRY, earl of Suſſex, hath challenged the ſame.

And his heir had the title of lord Fitzwalter granted him. See poſtea.

Creatus comes Suſſex, 8 Dec. 21 HEN. VIII. VINE. p. 561.

ROBERTUS, comes Suſſex, dominus Fitzwalter, *&c.*

ROBERT. FITZWALTER, ſum. ad parl. 23 EDW. I. claſ. de eodem anno.

2 HUMFRIDUS RATCLIFF, obiit anno 1566.

ELIZABETHA filia THO. ducis Norff.

1 HENRICUS, com. Suſſex.

ANNA, filia PHIL. CALTHORP, mil.

EDWARDUS, comes Suſſex, ſuperſtes anno 1640.

FRANCESCA, uxor HENRICI CHEEKE.

HENRICUS, com. Suſſex.

FRANCESCA, uxor THO. MILDMAY, mil.

ROBERTUS, comes Suſſex. ob. ſ. p.

THO. MILDMAY, miles & baronettus.

HENRICUS MILDMAY, miles & baronettus ſuperſtes anno 1640.

And that inferior honours meeting with ſuperior, are included therein, and do not ſever, may be obſerved by the ſeveral examples in this kingdom, where divers daughters and heirs have been married unto earls; by which means, had the ſaid inferior honours and dignities been abſolutely in fee, muſt neceſſarily have been extinguiſhed and loſt, in reſpect that they are not dividable; yet nevertheleſs we clearly diſcern, that the heirs male, to whom the ſaid earldoms have been

been intailed, have retained thoſe dignities, which theſe examples following will manifeſt.

MICHAEL DE LA POOLE was ſummoned to parliament by king EDW. III. as lord de la Pole; his ſon MICHAEL was, by king RICHARD II. created earl of Suffolk, whoſe ſon and heir MICHAEL was ſlain at Agincourt, leaving three daughters and heirs, which never challenged the title of lord de la Pole, but WILLIAM, his brother and heir male, retained the title of lord de la Pole, with his dukedom of Suffolk, without contradiction.

MICHAEL DE LA POOLE, dominus de la Poole, obiit 13 R. II. — Sum. ad parl. 43 Edw. III. 49 E. III. &c. uſque 8 R. II. clauſ. de eiſdem annis.

VINC. p. 499. Creatus comes Suffolc. anno 1385.

MICHAEL DE LA POOLE, creatus comes Suffolc. obiit anno 1415.

MICHAEL DE LA POOLE, cæſus in prælio de Agincourt, 3 HEN. V.

WILLIELMUS DE LA POOLE, marchio & poſtea dux Suffolc. decollatus, 26 HEN. VI.

ELIZABETHA, uxor JOHANNIS DE FOIX, comitis Kendal, ob. ſ. pr. VINC. p. 502.

ISABELLA, uxor .... domini Morley, ob. ſ. pr.

CATHERINA, monialis apud Briſyerd.

The family of the FITZ-ALANS were very anciently barons of Clun and Oſwaldſtre in Wales, and after marrying with ISABEL, the coheir of HUGH DE ALBINI, earl of Arundel, the ſaid earldom came into that family, by reaſon whereof thoſe baronies became incorporate into the earldom of Arundel. The iſſue male in the direct line failed in the time of HEN. V. THOMAS, earl of Arundel, dying without iſſue, and his ſiſters and heirs, *viz.* JOAN, married to WILLIAM BEAUCHAMP, lord of Bergavenny; ELIZABETH, married to THOMAS MOWBRAY, duke of Norfolk; MARGARET, married to ſir ROWLAND LENTHAL; and ALICE, to JOHN CHARLTON, lord Powis; yet neither they, nor any of their deſcendants, aſſumed the title of lord Fitz-Alan, Clun, *&c.* but JOHN FITZ-ALAN, lord Maltravers, next couſin and heir male, to whom the earldom was adjudged, poſſeſſed and enjoyed the ſaid titles and dignities of lord Fitz-Alan, Clun, *&c.* without contradiction. This THOMAS MOWBRAY, duke of Norfolk, was father of JOHN, duke of Norfolk, who, in right of his mother, contended in parliament with JOHN, lord Maltravers, earl of Arundel, for the ſaid earldom, he being the heir male, which earldom was by the King and lords in parliament, adjudged to the heir male, in regard of his poſſeſſion of the caſtle and ſeignory of Arundel, and the aforeſaid barony being incorporate into that earldom, were not ſevered, notwithſtanding the claim of the duke of Norfolk, who perceiving the earldom only to go with the caſtle of Arundel, never queſtioned the baronies farther, as thinking them inſeparable from the ſaid earldom.

FERDINANDO, late earl of Derby, died anno 1596, leaving three daughters his coheirs, *viz.* ANNE, the eldeſt, married to the lord Chandois, FRANCES, the ſecond, wife to the earl of Bridgewater, and ELIZABETH, the third, wife to the earl of Huntington; and yet, notwithſtanding thoſe coheirs, WILLIAM, now earl of Derby, brother and heir male, poſſeſſeth and enjoyeth all thoſe ſeveral titles and dignities of honours inherent and inveſted into that earldom, as appeareth by the plate upon his ſtall, in the chapel at Windſor, where he is

ſtiled

ſtiled WILLIAM, count de Derby, baron Stanley, ſeigneur Strange de Knockyn & Mohun, ſeigneur de l'Iſle de Man, *&c.* And further, that JAMES, now lord Strange, ſon and heir of the ſaid WILLIAM, now earl of Derby, is by our ſovereign lord king CHARLES, ſummoned to parliament by the name of lord Strange, which doth the more manifeſt thoſe titles to be more peculiarly in the earldom of Derby than in any other family.

THO. dominus Stanley, creatus comes Derbiæ, 27 Oct. 1 H. VII. VINC. p. 211.

HENRICUS, comes Derbiæ, obiit anno 1593.

ROG. STRANGE de Knokyn, ſum. ad parl. 3 R. II, claſ. de eodem anno.

1 FERDINANDO, comes Derbiæ, obiit 1594.

2 WILLIELMUS, comes Derbiæ, ſuperſtes, 1640.

1 ANNA, uxor domini Chandos.

2 FRANCESCA, uxor JOHAN. EGERTON, mil. com. Bridgewater.

3 ELIZABETHA, uxor HENRICI, comitis Huntingdon.

JACOBUS, dominus Strange, anno 1640.

GILBERT TALBOT, earl of Shrewsbury, lord Talbot, Furnival, Verdon, Lovetot, and Strange of Blackmere, died anno 1616, leaving three daughters and coheirs; the eldeſt married to the earl of Pembroke; the ſecond to the earl of Kent; and the third to the earl of Arundel; notwithſtanding which coheirs EDWARD TALBOT, brother and heir male to GILBERT, was, after the death of the ſaid GILBERT, earl of Shrewsbury, and retained all thoſe titles and dignities of honour without contradiction after the death of the ſaid EDWARD, who died without iſſue anno 1617. GEORGE, earl of Shrewsbury, couſin and heir male of the ſaid EDWARD, enjoyed the ſaid titles, which GEORGE dying unmarried, anno 1630, JOHN, now earl of Shrewsbury, couſin and heir male to him, the ſaid GEORGE, retaineth the ſame titles and dignities.

Creatus comes Salop. 20 Maii, 20 HEN. VI. VINC. p. 461.

JOHANNES, comes Salop, cæſus in prælio apud Northampton, 38 HEN. VI.

RICH. TALBOT, ſum. ad parl. 28 EDW. I. claſ. de eodem anno.

2 GILBERTUS TALBOT, de Grafton, miles, obiit 8 HEN. VIII.

1 JOHANNES, comes Salop, obiit 14 EDW. IV.

JOHANNES TALBOT, de Grafton, miles.

GEORGIUS, comes Salop.

FRANCISCUS, comes Salop.

JOHANNES TALBOT, miles.

GEORGIUS, comes Salop, obiit anno 1590.

JOHANNES TALBOT, de Grafton, anno 1605.

1 GILBERTUS, comes Salop, obiit 1616.

2 EDWARDUS, comes Salop, obiit anno 1617. ſine prole.

2 JOHANNES TALBOT.

1 GEORGIUS, comes Salop, obiit Cælebs anno 1630.

1 MARIA, uxor WILLIELMI, comitis Pembrochiæ.

2 ELIZABETHA, uxor HENRICI, comitis Cantii.

3 ALETHEA, uxor THO. comitis Arundel.

JOHANNES, comes Salop, dominus Talbot, Furnival, *&c.* ſuperſtes anno 1640.

The title, ſtile, and dignities, of the baronies of Bulbeck, Sandford, Badleſmere and Scales, coming into the earldom of Oxford, by marriage of the heirs of thoſe baronies; which baronies being incorporate and inveſted into that earldom, continued in the male line, notwithſtanding that there were heirs female, married to LATIMER, WINGFIELD, and KNIGHTLY: For it is plain, that JOHN VERE, earl of Oxford, who was the next couſin and heir male, enjoyed all thoſe titles without contradiction.

RICHARDUS DE VERE, comes Oxon.

1. JOHANNES, comes Oxon.
2. ROBERTUS DE VERE, miles.

1. JOHANNES, comes Oxon, obiit ſine prole, 4 HEN. VIII.
2. GEORGIUS VERE, miles, obiit vita patris.
1. JOHANNES DE VERE, de Roſworthy, in com. Devon, miles.

1. JOHANNES, com. Oxon, obiit ſine prole 18 H. VIII.
1. DOROTHEA, uxor JOHANNIS NEVILL, domini Latimer.
2. ELIZABETHA, uxor ANTHONII WINGFIELD de Letheringham, com. Suff.
3. URSULA, uxor GEO. WINDSOR, poſtea EDW. KNIGHTLY, de Fauſley, com. Northampton.
1. JOHANNES, com. Oxon, poſt mortem JOHANNIS, filii GEORGII.

In like ſort the dignities and titles of lord Percy, Fitz-Payne, *&c.* are ſtill retained by the preſent earl of Northumberland, notwithſtanding the daughters and heirs of THOMAS, earl of Northumberland, who died anno 1572, as the deſcent here drawn doth manifeſt.

HENRICUS, comes Northumbr. creatus anno 1377. VINC. p. 373.
HENRICUS, comes Northumbr. obiit 18 HEN. VIII.
HENRICUS DE PERCY, ſum. ad parl. 27 EDW. I. clauſ. de eodem anno.

1. HENRICUS, comes Northumbr. obiit ſine prole 29 HEN. VIII.
2. THOMAS PERCY, miles, attinctus 29 HEN. VIII.

1. THOMAS, reſtitutus com. Northumbr. decollatus anno 1572.
2. HENRICUS, comes Northumbr. ſeipſum occidit in turri anno 1585.

1. ELIZ. uxor RICHARDI WOODRUFF.
2. LUCIA, uxor EDW. STANLEY, militis.
3. MARIA, prioriſſa apud BRUXELS.
4. JANA, uxor HEN. SEYMOUR, fratris EDW. com. Hertford.
1. HENRICUS, comes Northumbr. obiit anno 1632.

1. ALGERNON, comes Northumbr. ſuperſtes 1640.

CHARLES

Camera depicta before the lords committees, 1640.

CHARLES LONGVILE, plaintiff,
The right honourable ANTHONY, earl of Kent, lord Haſtings and Ruthyn, defendant.

The plaintiff's petition.

That REGINALD GREY, his anceſtor, whoſe heir he is, was ſeized in fee of the dignities of lord Haſtings and Ruthyn:

Of the firſt of them by deſcent from his mother, the daughter and heir to JOHN, lord Haſtings.

Of the other by deſcent from his father.

That the ſaid REGINALD, ſo ſeized, was divers times in King EDWARD the third's time, ſummoned to parliament, by the name of lord Grey of Ruthyn, and accordingly ſate therein.

That the ſaid REGINALD died ſeized of the ſaid dignities, and by divers meaſne deſcents, the ſame deſcended to ſir EDMUND GREY.

That the ſaid EDMUND being ſo ſeized, was by letters patents of King EDW. the fourth, created earl of Kent, to him and the heirs males of his body begotten, and ſhortly after died ſeized of the ſaid dignities.

After whoſe death, the ſaid dignities, by divers meaſne deſcents, deſcended and came to ſir HENRY GREY, couſin and heir of the ſaid EDMUND; which ſaid HENRY being thereof ſo reſpectively ſeized, died ſo ſeized without iſſue of his body begotten; after his deceaſe, the title of the ſaid earldom deſcended and came to the defendant, as heir male of the body of the ſaid EDMUND, and the dignities of lord Haſtings and Ruthyn to the plaintiff, as couſin and heir of the ſaid REGINALD, and nephew and next heir of the ſaid HENRY, earl of Kent, that is to ſay, ſon and heir of SUSAN, late wife of ſir MICHAEL LONGVILE, ſiſter and heir of the ſaid HENRY.

The defendant thereunto ſaith.

Firſt, concerning the dignity of the lord Haſtings, the ſame was merely titular, to the ſaid REGINALD, lord Grey of Ruthyn; for if it had been real, he would in all probability have deſired to have been ſummon'd to parliament by the name of lord Haſtings, becauſe that it was the more ancient barony, and ſo ſhould have had precedency accordingly.

Secondly, there never was any ſuch title or dignity in law, as lord Ruthyn, but lord Grey of Ruthyn, the ſame being for diſtinction of other lord Greys of other places, as Codnor and Wilton.

Thirdly, if the dignities were otherwiſe than titular, at the time when the ſaid EDMUND was created earl of Kent, and that the ſame were deſcendable to the heir general, according to the courſe of the common law, which the defendant grants not; then the plaintiff can pretend no title thereunto; for the ſaid EDMUND, earl of Kent, had iſſue GEORGE, earl of Kent, and two daughters, ELIZABETH and ANNE; ELIZABETH, married to ſir ROBERT GREYSTOCK, and ANNE, married to the lord Grey of Wilton, of both which there are divers iſſues.

The ſaid GEORGE, earl of Kent, had two wives, by the firſt of which he had iſſue RICHARD, earl of Kent, who died without iſſue; and by the ſecond, ſir HENRY GREY, and ANTHONY GREY, from which ſir HENRY the plaintiff is deſcended, and from the ſaid ANTHONY, the defendant.

So that the ſaid dignities of Haſtings and Ruthyn, were in the ſaid RICHARD, earl of Kent, either merely titular, or attending the ſaid earldom; and if ſo, then they came with the earldom to the defendant, or elſe real; if real, either

deſcendable to the heir female in this caſe, or extinct; if deſcendable, the ſame muſt then be diviſible, between the ſaid ELIZABETH and ANNE, the aunts and coheirs of the ſaid RICHARD; but baronies, according to BRACTON's rule, *liber 2. fol. 71. b. non ſunt diviſibiles, ne deveniant ad nihilum*; and ſo the practice hath ever ſince been.

If they be extinct, then the plaintiff cannot challenge them, but the ſame are in the King to diſpoſe thereof.

Thoſe baronies of Haſtings, and Grey of Ruthyn, had their original by writ of ſummons, wherein no words of inheritance are comprized; but by the operation of law and uſage, the parties ſo ſummoned had a qualified fee ſimple in them, deſcendable only unto the heirs male.

And that this ſhould be ſo, it ſtands with theſe reaſons.

Firſt, the title that gives them the inheritance, is to be perſons able to ſit in parliament, which heirs female cannot do.

Secondly, if an heir female may have ſuch an inheritance of a barony, if ſhe take husband, the ſame inheritance ſhall be deemed in him as in right of his wife, and in every ſuit touching the ſame, either brought by them or againſt them, he and his wife muſt be named; and then by that reaſon, if the King would call ſuch a woman's husband to the parliament, in his wife's right, then muſt ſhe be named in the ſame writ; but there was never any precedent of ſuch a writ; and therefore it follows, that there is no ſuch right of barony in heirs female: but where ſuch a caſe happens, if there be no heir male collateral of the party ſo ſummoned, the King may diſpoſe thereof as he pleaſeth, tho' it hath uſually been conferred in ſuch caſes upon the husband of ſuch a wife, (having iſſue by her) or upon her heirs males.

But in caſes of baronies, where there have been heirs general, and heirs males collateral, ſuch an heir male hath had the barony.

For inſtances herein, the lord Berkley was an ancient baron by writ, and the heir male collateral did enjoy the ſaid barony, from the daughter and ſole heir; and ſo it was adjudged, *tempore* HEN. VII. by the King in the caſe of the lord Latimer againſt ſir ROBERT WILLOUGHBY, of Brook, for the barony of Latimer. And ſo likewiſe in the caſe of the lord Abergavenny. RALPH, lord Cromwell, whoſe anceſtors were called by writ, died without iſſue; his inheritance deſcended to two ſiſters, the younger was married to ſir HUMPHREY BOURCHIER, who was created lord Cromwell, and thereby accepted as a baron, and not by right of his wife.

RALPH NEVILL, ſecond ſon to the earl of Weſtmerland, was married to the heir of Ferrers, baron of Overſley, yet he was never created nor reputed as a baron

That theſe baronies are not real, but merely titular.

Beſides, this caſe is ſtronger, becauſe the baronies here are veſted in an earldom, and in ſuch caſes are merely titulary; for if an earl have obtained by marriage, titles of divers baronies, they afford him no more privilege than that earl which hath never a barony.

The King calls the ſon and heir of an earl to the parliament, by the name of one of his father's titular baronies; if this barony were really in the father, how could the ſon be veſted into the ſame, without his father's reſignation?

And that ſuch baronies inveſted in earldoms, are merely titulary, and go not to the heirs female, but to the heir male collateral, appears by theſe inſtances.

HUGH COURTNEY was ſummon'd to parliament, *tempore Edwardi primi*, as lord Courtney, his heir was afterwards made earl of Devon; whoſe iſſue lineal failed in JOHN COURTNEY; his ſiſter and heir was married to ſir ROGER CLIFFORD; yet neither the ſaid ſir ROGER, nor any of his ſons he had by her, aſſumed the title of lord Courtney; but EDWARD COURTNEY, the next heir male, enjoyed both the titles of earl of Devon, and lord Courtney.

JOHN FITZ-ALAN, earl of Arundell, and lord Maltravers, had iſſue HUMPHREY, who died 16 HEN. VI. without iſſue; AMICIA, his only ſiſter and heir, was married to ſir JAMES of Ormond; and yet he never challenged the titles of lord Maltravers,

Maltravers, *&c.* but left them to WILLIAM, earl of ARUNDEL, the next couſin and heir male.

The like in the caſe of GEORGE, earl of Cumberland, *anno* 1605, the earls of Rutland and Suſſex; and the like in the caſes of DE LA POOL, earl of Suffolk, and the earls of Oxford, Shrewsbury, and Derby, in which there were divers coheirs, and many baronies, attending upon the ſaid earldoms; and yet the next heirs males of the earldoms enjoyed the ſaid ſeveral and reſpective baronies.

And ſo after the death of the ſaid RICHARD, earl of Kent, who died without iſſue, his collateral heirs male (notwithſtanding his aunts and coheirs) enjoyed thoſe dignities and baronies, together with the ſaid earldom.

But on the other ſide it may be, it will be ſaid,

First, that dignities are deſcendable to heirs females, and deviſable, 23 H. III. FITZ-HERBERT, *tit. partition* 18. If the earldom of Cheſter deſcend to coparceners, it ſhall be divided betwixt them as other lands, and the eldeſt ſhall not have the earldom entire; and that caſe was adjudged by the court.

If a man hath an earldom to him and his heirs, and dieth, having iſſue one daughter, the dignity ſhall deſcend to her and her poſterity, as well as any other inheritance; and this appears (as the lord COKE reports it) by many precedents, and by a late judgment given in SAMPSON LENNARD's caſe, who married with MARGARET, the only ſiſter and heir of GREGORY FIENES, lord Dacres of the South, and in the caſe of WILLIAM, lord Roſs.

Reſponſ.

The earldom of Cheſter was *per cincturam gladii*, and no titular thing as this is; and there, in that caſe, it is intended that the poſſeſſions of the ſaid earldom ſhould be divided; and the lord COKE upon that caſe ſays, that for the dignity the King might confer it upon which of the daughters he pleaſed; adding withall, that ſuch had been the uſage ſince the conqueſt, as 'tis ſaid.

By which obſervation of the lord COKE, it appears that this conferring the earldom upon one of the daughters, was but a gift *de novo*, but yet fitteſt to be conferred upon one of the coheirs.

Againſt that judgment in the lord Dacre's caſe, there are divers precedents; beſides, it doth not *in omnibus quadrare* with our caſe, for it was a ſingle barony, and never attended on an earldom.

For the caſe of the lord Roos, if it be well weighed, it will make againſt the plaintiff; for he had not that barony that was attendant upon the earldom of Rutland, which was the barony of lord Roos of Hamlake, but the dignity of lord Roos without addition.

To prove that a call by writ is not a ſtate in fee, as is pretended, and that muſt as well be proved by reaſon as by precedent.

There are in England barons made two ſeveral ways, the moſt ancient is by writ, the other by letters patents and creation.

Thoſe that are made by letters patents have their honours limited by eſpecial words in the patent, to them and to the heirs males of their bodies, or to them and to the heirs of their bodies. Thoſe by writ are not ſo, for the writ is perſonal, and without limitation: and I think it will be granted of all, that it cannot be a ſtate in fee, if it be not limited; beſides, a ſtate in fee is ever ſettled and certain, and receiveth no alteration; but titles of dignities, as baronies by writ, if they fall amongſt coheirs, they cannot be divided as other hereditaments in fee; and therefore it cannot be ſaid, that a barony by writ is a ſtate in fee; the lands may deſcend equally, but the dignity reſteth in the King, for an honour cannot be divided.

A ſtate in fee is the ſame to coheirs, as to one ſole heir general; for it reſts in the King, when it falls amongſt coheirs, and therefore it muſt be the ſame in a ſole heir.

A ſtate in fee may be transferred over, or alienedy by fine and recovery, to a ſtranger, or any other common perſon; but titles of honour can have no ſuch paſſage.

But becauſe it may be objected in the behalf of the heir general, that although an honour cannot be divided, as the land may, yet the honour ought to deſcend upon the eldeſt daughter, or to her iſſue, and that the younger can challenge no property at all in it.

In anſwer whereof it will manifeſtly appear by precedent, where baronies by writ have fallen amongſt coheirs, ſometimes the iſſue of the eldeſt hath had the honour, ſometimes the King hath conferred it upon the iſſue of the younger, and ſometimes upon neither, and ſometimes upon a ſtranger; by all which it is moſt clear, that it is not a ſtate in fee, but it is abſolutely in the King's power to diſpoſe of it at his pleaſure; yet it is obſervable, that if the heir male hath ſtood in competition with the heir female, eſpecially where the heir male hath the *caput baroniæ*, the heir male hath always prevailed againſt the heir female.

Again, the King directeth his writ to any one, whom in his own judgment he ſhall think worthy to be a member, fit to counſel him *in arduis negotiis regni*; it limiteth or ſettleth nothing to poſterity, but deſcending in blood to thoſe that are capable of the writ, and approved by the Sovereign; ſome certain deſcents doth by that means make it a cuſtom, and conſequently right.

And this is the true ſtate and caſe of a barony by writ, whilſt it continueth in a male line; and it appears by the ſummons of parliament, that many have been called, whoſe ſons were never ſummoned; and therefore it being ſuppreſſed in the ſon, who was capable of the writ, it can be no ſtate in fee, but arbitrary in the King to diſpoſe of, and ſo conſequently the heir general to have no right at all.

If a barony by writ ſhall fall to an heir female, who by reaſon of her ſex is incapable of the means to enable her, and unfit to do thoſe ſervices by the writ, then muſt that dignity determine, and reſt wholly in the King, either to revive or ſuppreſs it; for by the words of the writ, ſhe can challenge no right, much leſs her ſon, who is more remote.

If a call by writ doth imply a ſtate in fee, upon which ground the right of the heir general dependeth; then all baronies formerly granted by patent to the heirs male, are now become ſtates in fee; for they are all ſummoned by writ.

There are divers prerogatives, ſo inherent and inſeparably inveſted in the crown, as the law hath nothing to do withal; they are ſpecial jewels which the crown cannot want, without imperfection or blemiſh; amongſt the which, the conferring of honours is not the leaſt, for the King is the fountain of honour; and ſhall this precious pearl be taken from the crown, and brought within the compaſs of law by a colourable ſurmiſe? ſo it muſt be matter of good conſequence, grounded upon ſubſtantial authority, that muſt take away ſo royal a privilege from the King.

If this were permitted, theſe inconveniences would follow, That whereas all honours are derived, and take their original from the King as the only fountain of honour who directeth to whom, how long, and when there ſhall be a full period and determination of the ſame, and that by his royal power only, not reſtrained by law, nor infringed by cuſtom.

This power muſt be taken from him, and reſt now wholly in the diſpoſition of a woman, who many times led by affection, makes her choice without judgment or diſcretion, of a mean man, no gentleman, and it may be one whom the King favoureth not, and yet the iſſue of ſuch a one muſt be a baron and peer of the realm; if this maxim be true, and that without the King's permiſſion or approbation, for it is deſcended upon him in fee; how much this derogateth from the King's princely prerogative and abſolute power, let the indifferent judge.

But it may be ſaid in the behalf of the heir general, that the baronies of Weſtmerland and Veſcy came into the family of CLIFFORD by an heir general, and therefore, by the ſame reaſon, they may be transferred over by an heir general into another family; and to this purpoſe multiplicity of examples may be produced.

And becauſe precedents in this caſe will be the beſt proof on either ſide, it will not be amiſs to produce ſome amongſt many, that the judicious may conſider of them accordingly.

As for example, the barony of Beke of Eresby, to WILLOUGHBY; the barony of Maltravers, to ARUNDEL; the barony of Furnival, to NEVIL; the barony of St. John, to POYNINGS; the barony of Fauconberg, to NEVIL; the barony of Audley, to TOUCHET; the barony of Ferrers of Chartley, to DEVEREUX; the barony of Morley, to LOVELL; the barony of Lovell lord Morley, to PARKER; and the barony of Fitzwalter, to RATCLIFF; the marrying of which heirs, their iſſue hath had and enjoyed thoſe dignities accordingly, and many other in the like caſe may be remembred: Upon which ground it is concluded by the common law, that a call by writ doth eſtabliſh and ſettle a ſtate in fee, and ennobleth the blood accordingly; and by that means would bring it within the compaſs of the common law, and ſo abſolutely take from the King that power and prerogative which hath ever been inherent to his crown and royal authority: For if it be a right in the heir general, then is grace needleſs: If it be a ſtate of inheritance in fee, it is not in the King to alter, for it is a fundamental law of the kingdom and cannot be changed.

But that this furmiſed eſtate in fee hath been altered, it ſhall hereafter be plainly demonſtrated by precedent, and the right pretended to be in the heir general, will manifeſtly appear to be in the King, as by theſe examples following.

And firſt an example or two, where there have been coheirs of a barony by writ, and the honour hath been by the King conferred to the iſſue of the eldeſt daughter.

The barony of Norton, *com. Nott. tempore* HEN. III.

ROBERTUS DE ALFRETON, baro de Norton.

This barony is given to the iſſue of the eldeſt ſiſter.

Dominus THOMAS DE ALFRETON, baro de Norton, obiit ſine prole.	ALICIA, filia primogenita, uxor WILLIEL. CHAWORTH.	ANNA filia ſecunda, uxor THOMÆ LATHUM, militis.

THOMAS CHAWORTH, miles, baro de Alfreton, jure matris.

The barony of Brune in *com. Cantabr. temp. regis* STEPH.

PAGANUS PEVERELL, baro de Brune.

This barony is given to the iſſue of the eldeſt ſiſter.

WILLIEL. PEVERELL, baro de Brune, ob. ſ. p.	1 MATILDIS, filia primogenita ob. ſ. p.	2 ALICIA, filia ſecunda uxor HAMONIS PECHE.	ROSIA, domina Roſs.	ASCELINA, uxor .... WATEVILE.

Dominus GILBERTUS PECHE, baro de Brune.

Now

Now one precedent to ſhew where there have been coheirs of a barony by writ, and the honour hath gone to the iſſue of the youngeſt daughter.

This barony is confer'd upon the iſſue of the youngeſt daughter.

RADULPHUS, dominus Cromwell.

RADULPHUS, dominus Cromwell, obiit ſine prole.

MATILDIS, uxor RICHARDI STANHOPE, mil.

1 MATILDIS, filia primogenita, uxor THO. NEVIL, militis.

2 JANA, filia ſecunda, uxor HUMFRIDI BOURCHIER, qui factus fuit dominus Cromwell, jure uxoris.

One precedent to ſhew where a barony by writ hath fallen into coheirs, and the honour quite extinguiſhed, as in the barony of Powys.

EDW. CHARLTON, miles, dominus Powys.

1 JANA, filia primogenita & cohæres, uxor JOHANNIS GREY.

2 JOCOSA, filia ſecunda, uxor JOHANNIS, domini TIPTOFT, 19 H. VI.

HENRICUS GREY, miles, dominus Powys.

JOHANNES TIPTOFT, comes Wigorniæ.

RICHARDUS GREY, miles, dominus Powys.

JOHANNES GREY, miles, dominus Powys.

ELIZABETHA, uxor JOHANNIS LUDLOW, militis.

1 ANNA, filia primogenita & cohæres, uxor THO. VERNON de Stokſey.

2 ALICIA, filia ſecunda & cohæres, uxor HUMFR. VERNON de Hodnet, arm.

JOHANNES GREY, miles, dominus Powys.

GEORGIUS VERNON, filius & hæres.

EDWARDUS GREY, dominus Powys, obiit ſine prole, legitima.

JOHANNES VERNON de Hodnet, duxit ELIZ. ſororem WALT. DEVEREUX, com. Eſſex.

And this barony, although it were long ſued for, was not given to any of them.*

I ſhall not need to ſhew more examples in this kind, becauſe I think it will be granted of all, that when a barony by writ falls amongſt coheirs, the honour

* See the claim of HENRY VERNON of Stokeſay, eſq; to the barony of Powys, in the appendix.

is absolutely in the King, because an honour cannot be divided, and this is a general ground maintained by all.

But it rests now to shew by precedent, where a barony by writ falls into one sole heir general, and yet neither she, nor her issue, hath enjoyed the title or dignity of her ancestors, but that the King hath disposed thereof at his pleasure, as sometimes to the issue of the half blood before the whole, sometimes to a mere stranger, and most times, if there hath been competition between the heir male and heir female, the heir male hath carried the honour, especially if the heir male hath the *caput baroniæ*; and this is the direct case of the said of Cumberland.

Query, Whether Francis of Cumberland, had the *caput baroniæ*.

The barony of Holgate.

It appears by an inquisition, after the death of JOHN HANDLOE, that the same JOHN, in right of MAUD, his wife, was seised of the manors of Holgate, Acton-Burnel, *&c.* for term of his life; the remainder to NICHOLAS BURNEL, son of the said JOHN and MAUD, by reason of a fine levied in court, and that JOHN LOVEL was next heir to the said MAUD, by her first husband; notwithstanding NICHOLAS BURNEL, *alias* HANDLOE, was baron of Holgate, and was summoned to parliament anno 24 EDW. III.

Inq. 20 Edw. III.

Sum. to parl. 24 Edw. III.

PHILIPPUS BURNEL, baro de Holgate.

This barony goeth to the half blood.

- EDW. BURNEL, dominus & baro de Holgate, ob. sine prole 9 EDW. II.
- JOHANNES LOVEL, primus maritus.
- MATILDIS, soror & hæres EDW.
  - JOHANNES HANDLOE, 2dus maritus, ob. 20 EDW. III.
  - JOHANNES, dominus LOVEL, filius & hæres.
  - NICHOLAUS HANDLOE, *alias* BURNEL, baro de Holgate, sum. ad parl. 24 EDW. III.

The barony of Grooby.

It appears by an inquisition, after the death of WILLIAM DE FERRERS, lord of Grooby, 23 HEN. VI. that MARGARET, lady of Grooby, daughter and coheir of ROGER QUINCY, earl of Winchester, did give unto WILLIAM FERRERS, her second son, and to the heirs of his body, the manor of Grooby, *&c.* And after the said WILLIAM, and his heirs, were summoned to parliament.

Escaet. 23 Hen. VI.

WILLIELMUS DE FERRARIIS, comes Derb. obiit 38 HEN. III. — MARGARETA, filia & cohæres ROGERI DE QUINCY, com. Winton, cujus de Grooby descendebat.

Here the barony goes to the second son, and his issue.

- ROBERTUS DE FERRARIIS filius primogenitus comes Derbiæ.
- WILLIELMUS DE FERRARIIS, baro de Grooby, obiit 16 EDW. I.
  - WILLIELMUS DE FERRARIIS, dominus & baro de Grooby, obiit 18 EDW. II.

The barony of Kilpeck.

Eſcaet. 23 E. III. ROBERT WALROND, baron of Kilpeck, died 1 EDW. I. without heirs of his body, and ROBERT WALROND, ſon of WILLIAM, brother of the ſaid ROBERT, was his next heir; notwithſtanding the ſaid ROBERT deceaſed, did give to ALAN PLUGENET, ſon of ALICE, his ſiſter, the caſtle, manor, and lordſhip of Kilpeck, *&c.* to have and to hold to the ſaid ALAN, and to the heirs of his body begotten, as by the ſaid inquiſition appeareth; after whoſe death the ſaid ALAN, and his heirs, were barons of Kilpeck, and ſummoned to parliament.

Sum. to parl. 24 E. III.

ROBERTUS WALROND, baro de Kilpeck.

This barony goes to the ſiſter before the brother's iſſue.

1. ROBERTUS WALROND, baro de Kilpeck, obiit 1 EDW. I. ſ. p.

2. WILLIELMUS, filius ſecundus.

1. ROBERTUS, filius & hæres.

2. JOHANNES.

ALICIA, uxor ... PLUGENET.

ALANUS PLUGENET, baro de Kilpeck, ob. 27 EDW. I. ſum. ad parl. 23 EDW. I.

The barony of Latimer.

JOHN NEVIL, lord Latymer, intailed the barony of Latimer, with divers other lands, after his death, to GEORGE NEVIL, ſon of RALPH, earl of Weſtmerland, and died 9 HEN. VI. After whoſe death the ſaid GEORGE entered into the ſaid barony of Latimer, and was ſeiſed thereof to him, and the heirs of his body begotten, by virtue of the ſaid intail, and was ſummoned to parliament as lord Latimer, 10 HEN. VI. So that by this it appears, that the title and dignity of lord Latimer was, by the King, conferred upon GEORGE NEVIL, a ſtranger, and not of the blood, before ROBERT WILLOUGHBY, lord of Brook, deſcended of the ſole heir, although challenge and claim was made to the ſame: And therefore a barony by writ is no ſtate in fee.

WILLIELMUS, dominus Latimer, obiit 7 RICH. II.

MATILDIS, filia HENRICI, comitis Northumbr. uxor 1.

JOHANNES NEVIL, dominus de Raby.

ELIZABETHA, ſola filia & hæres, uxor 2da.

RADULPHUS NEVIL, comes Weſtmerland.

JOHANNES NEVIL, dominus Latimer, obiit 9 H. VI. ſ. p.

ELIZABETHA, ſoror & hæres, uxor THOMÆ WILLOUGHBY, mil.

GEORGIUS NEVIL, dominus Latimer, ſummonit. ad parliament.

JOHANNES WILLOUGHBY, miles.

HENRICUS NEVIL, miles, ob. vita patris.

ROBERTUS WILLOUGHBY, miles, dominus Brook, vindicator baroniæ de Latimer, temp. H. VII.

Here being a ſole heir general, the King confer'd the dignity on a ſtranger.

RICHARDUS NEVIL, dominus Latimer, defenſor dignitatis adverſus ROBERTUM WILLOUGHBY de Brook, temp. H. VII.

The

The barony of Blankney.

The King ſendeth greeting; Know ye, that foraſmuch as our welbeloved and faithful EDMUND DEINCOURT, —That his ſirname and arms ſhould, after his death, be extinguiſhed in the perſon of ISABEL DEINCOURT, the daughter of EDMUND DEINCOURT, his heir apparent; and did heartily deſire that the ſirname and arms might, after his death, be henceforward had in remembrance: Now at the requeſt of the ſaid EDMUND, and for the good and laudable ſervices which he hath done to the lord EDWARD, of worthy memory, ſometime King of England, our father, and to our ſelf; we have by our letters patents granted and given licence for us and our heirs, as much as in us is, to the ſaid EDMUND, that he may infeoff whomſoever he will of ſuch his manors, lands, and tenements, which he holdeth of us *in capite*, to have and to hold to them and their heirs, of us and our heirs. Pat. 10 Edw. II. m. 13.

By virtue of this licence, the ſaid EDMUND did alien all his lands and tenements aforeſaid, to one WILLIAM, the ſon of JOHN DEINCOURT, and to the heirs of his body begotten, *&c.* and after died in the laſt year of king EDWARD II. After whoſe death the ſaid WILLIAM, the heir, was ſummoned to parliament as baron of Blankney. Eſcaet. 20 Edw. II. Sum. Parl. 7 Edw. III. Clauſ. in dorſ. pars 2da.

EDMUNDUS DEINCOURT, baro de Blankney, obiit 20 EDW. II.

EDMUNDUS, obiit vita patris.

ISABELLA, filia & hæres.

JOHANNES DEINCOURT.

WILLIELMUS DEINCOURT, baro de Blankney, cui EDM. conceſſit terras ſuas.

JOHANNES DEINCOURT.

Here being a ſole heir female, the King conferred the title and dignity on the male line.

WILLIELMUS DEINCOURT, obiit vita patris.

WILLIELMUS DEINCOURT, baro de Blankney.

The barony of La Warre.

THOMAS, lord La Warre being ſeiſed, in his demeſne as of fee-tail, to him, and the heirs of his body begotten, by virtue of a fine levied in the time of his anceſtors, of the barony of La Warre, with divers other lands, did, as appeareth by an inquiſition after his death, 5 HEN. VI. wherein is found that JOHN GRIFFIN was the next heir general of the ſaid THOMAS of the whole blood; and that REGINALD WEST, knight, was his next heir by virtue of the ſaid entail: Afterwards the ſaid REGINALD WEST was ſummoned to parliament, anno 7 HEN. VI. by the name of REGINALD DE LA WARE, knight, ſo that the King conferred the dignity upon the half blood, before the whole blood, clean contrary to a ſtate in fee, and repugnant to the maxim of one ſole heir. Eſcaet. 5 H. VI. Clauſ. in dorſ. 7 HEN. VI.

JOHANNES,

JOHANNES, dominus La Warre.

ELIZ. filia ADAMI, domini Wells, uxor 1; ROGERUS, dominus La Warre; ELEANORA, filia JOHANNIS, domini MOUBRAY, uxor 2; CATHARINA, uxor NICHOLAI LATIMER.

JOHANNES dominus La Warre, ob. s.p. 5 H. VI.; THOMAS, dominus La Warre, ob. s.p.; JOHANNA, uxor 2. JOHANNIS WEST, militis.; CATHARINA, filia & hæres, uxor THOMÆ GRIFFIN.

REGINALDUS WEST, dominus La Warre, 7 H. VI.; JOHANNES GRIFFIN, hæres THOMÆ, domini La Warre.

Here the King conferreth the honour upon the iſſue of the half blood, before the whole.

The barony of Berkley.

THOMAS, lord Berkley, the elder, being ſeiſed in his demeſne as of fee, in the caſtle and manor of Berkley, in the county of Glouceſter, by a fine levied in the King's court, 23 EDW. III. did intail the ſaid caſtle and manor, after his death, to MAURICE, his ſon, and to the heirs male of his body begotten, with other remainders: And the ſaid MAURICE had iſſue THOMAS, lord Berkley, and JAMES BERKLEY, knight, which JAMES died in the life of his brother, leaving JAMES, his ſon and heir, alive. After the ſaid THOMAS, lord Berkley, died anno 5 HEN. V. leaving ELIZABETH, his daughter and heir, married to RICHARD BEAUCHAMP, earl of Warwick; after whoſe death JAMES, the nephew by his brother, entred into the ſaid caſtle, by reaſon of the ſaid intail, and was baron Berkley, and ſummoned to parliament 9 HEN. V.

Eſcaet. 5 H. V.

THOMAS, dominus Berkley.

MAURITIUS, dominus Berkley.

1 THOMAS, dominus Berkley, obiit 5 HEN. V.

ELIZ. ſola filia & hæres, uxor RICH. BEAUCHAMP, comitis Warwic.

2 JACOBUS BERKLEY, miles, filius 2dus. obiit vita fratris.

JACOBUS, dominus BERKLEY, poſt mortem avunculi, ſummonit. ad parliament. 9 HEN. V.

Here the King conferreth the honour upon the heir male, though there were a ſole heir female, and ſhe married to a great earl.

The barony of Ogle.

The barony of Ogle had its original by writ of perſonal ſummons, directed to ROBERT DE OGLE, 2 EDW. IV. by reaſon whereof the blood was ennobled, and the honour continued ſix deſcents in the male line, without interruption, until it came to ROBERT, lord OGLE, that died 4 ELIZ. without iſſue, leaving MARGARET, his ſiſter and ſole heir, married to GREGORY OGLE of Chipping-

ton;

ton; the ſaid ROBERT, lord OGLE, convey'd his lands and chief honours to CUTHBERT OGLE, his half brother, who was, after the death of ROBERT, ſummoned to parliament, by the name of CUTHBERT, lord OGLE, before the ſiſter of the whole blood.

DOROTHEA filia HENRICI WITHERINGTON, mil. uxor 1.

ROBERTUS 5tus. dominus Ogle, cæſus in Scotia, 36 HEN. VIII.

JOHANNA, filia CUTHBERTI RATCLIFF, mil. uxor 2da.

ROBERTUS, dominus OGLE, obiit 4 ELIZ. ſine prole.

MARGARETA, ſoror & hæres, uxor GEORGII OGLE de Chipington.

CUTHBERTUS, dom. OGLE, hæres maſculus fratris, obiit 16 Mart. 40 ELIZ.

1 THOMAS OGLE, filius & hæres.

2 ROBERTUS, filius 2dus.

The barony of Abergavenny.

Sir GEORGE NEVIL, baron of Abergavenny, 27 H. VIII. by his laſt will and teſtament, entailed the barony of Abergavenny, and all other his caſtles, honours, lordſhips, dominions, manors, *&c.* and all other hereditaments, *&c.* to himſelf, and the heirs males of his body; the remainder to ſir THOMAS NEVIL, knight, his brother, and to the heirs males of his body, *&c.* and for default of ſuch iſſue, to ſir EDWARD NEVIL, knight, and to the heirs males of his body, with other remainder over, and died, leaving iſſue HENRY, late lord Abergavenny, who died, leaving iſſue MARY, lady Fane, his ſole daughter and heir, living anno 1597, who made challenge to the title, dignity, and barony of Abergavenny, againſt EDWARD NEVIL, of Abergavenny, ſon of EDWARD, ſon of ſir EDWARD, ſon of GEORGE, lord of Abergavenny, father of GEORGE, lord of Abergavenny, father of HENRY, lord of Abergavenny, father of MARY, lady Fane, which caſe was diliberately heard and adviſed of by the lords in parliament ſeveral times, but in concluſion was adjudged to the heir male collateral, before the lineal heir general.

All which precedents croſſing the ground of a ſole heir, ſo full in the point, doth plainly ſhew, that falling to an heir general, the right is abſolutely in the King, and he alone hath power to diſpoſe of it; and therefore a call by writ is no ſtate in fee.

GEORGIUS NEVIL, miles, dominus Abergavenny, obiit 7 H. VII.

1 GEORGIUS NEVIL, mil. dominus Abergavenny.

2 THOMAS NEVIL, mil. filius ſecundus.

3 EDWARDUS NEVIL, mil. filius tertius.

HENRICUS NEVIL, dominus Abergavenny.

MARGARETA, uxor ROB. SOUTHWELL, cuſtodis rotulor' cancellar'.

EDWARDUS NEVIL, filius & hæres.

MARIA, ſola filia & hæres, uxor THOMÆ FANE, militis.

EDWARDUS NEVIL, qui recuperavit baroniam de Abergavenny in parliamento.

One thing more to prove, that a barony by writ is not a ſtate in fee, is that whoſoever will peruſe the ſummons of parliament, in antient time, ſhall find barons divers times ſummoned, whoſe poſterity were never ſummoned after, and yet their male line continued, and ſome to this day, without either attainder, or other fraction; by which it will be moſt clear, that in antient time it was meerly in the King's power to call the father and omit the ſon at his pleaſure, as in theſe few examples amongſt many will plainly ſhew.

REGINALDUS DE ARGENTINE, ſummoned 25 EDW. I.
ST. JOHN of Lageham, ſummoned 25 E. I. 27, 28 E. I. &c. 7, 8, 9 E. II.
RADULPHUS DE FRECHVILE, ſummoned 25 EDW. I.
JACOBUS FYNES, dominus Say & Scale, ſummoned 27 HEN. VI.
WILLIAM FYNES, his ſon, ſummoned 38 HEN. VI. 1, 2, 6, 7, 9 EDW. IV.

Notwithſtanding all which this barony was diſcontinued for ſeveral deſcents; and although it was challenged both in the time of queen ELIZABETH and king JAMES, it could never be obtained, only king JAMES was pleaſed to admit of ſir RICHARD FYNES to be baron Say and Scale, *ex gratiâ*, which he accepted, and came in as puiſne baron, which he would never have accepted of grace, if he could have challenged of right.

WILLIAM DEVEREUX, ſummoned 27 EDW. I.
THOMAS WAHULL, ſummoned 25 EDW. I.
JOHN WHITTINGTON, ſummoned 25 EDW. I.
WILLIAM VAVASOUR, ſummoned 27, 28, 30, 34 EDW. I. 1, 2, 3, 4, 6 EDW. II.

And to theſe a multitude of others might be added; by which it is plain, that in all times the Kings of the land did not hold themſelves bound to call the ſon after the father's death, which they could not have refuſed, were a call by writ, a ſtate in fee, as is by ſome ſurmiſed.

And were a call by writ admitted to be a ſtate in fee, how many families are there extant at this day, that might juſtly make their claim and challenge the right? and the baronage of England would be infinite, nor were it in the power of the King to reſtrain them.

The argument of WILLIAM DUGDALE, eſq; Norroy King at Arms, for the lord GREY of Ruthyn's title, againſt the title of the earl of Kent.

Whether a barony gotten by a woman, inveſted afterwards with an earldom, *ſibi & hæredibus maſculis*, is ſeparable from the earldom by an heir general, in the lineal deſcent, or carried away by the heir male in the collateral.

Reaſons why it ſhould not be ſevered from the earldom.

THESE may ſeem the important conſequences, and inconveniences, that the title of the barony ſhould not be ſeparated.

First, If the honour of an earl, ſhould not be accompanied with the title of a barony, it is imagined the earldom cannot ſubſiſt.

Secondly, The ſon and heir of an earl, ſhould not have the name and title of a lord.

Thirdly, The ſaid ſon and heir, ſhould conſequently loſe his precedency before a baron.

For the first it seemeth not necessary, that the title of an earl, should be accompanied with the title of a barony; for the first earls in the Conqueror's time, as appeareth by domesday-book, are simply called, *comes* HUGO, *comes* ROGERUS, *comes* GULIELMUS; afterwards the single name of the county was added, as *comes Cestriæ*, *comes Oxeniæ*, or of two counties when they had obtained another by hereditary right of succession; as earl of Hereford and Essex; earl of Gloucester and Hertford: The first that added more titles in his stile, was WILLIAM of Valence, earl of Pembroke, who, after the French fashion, stiled himself lord of Waishford and Montiniac, whereof he was proprietary lord. And afterwards others imitating him; some added in their titles the names of their baronies, and some of their principal manors and lordships. Answer to those reasons.

2. Had a barony been so necessarily requisite to earls and dukes; neither Kings would have created, nor they accepted such honours without the title of baronies; for it appeareth by publick instruments, under their hand and seal, that PIERS GAVESTON was created earl of Cornwall by king EDW. II. ANDREW DE HARCLA, earl of Carlisle, by the same King. WILLIAM DE CLINTON, earl of Huntingdon, by king EDW. III. *&c.* and had no title of any barony at all. Earls without baronies.

Yet no man doubteth but every one of these were lawfully barons implicative, though not in name, when they were summoned (as the greater dignity carried the lesser) to parliament, and had place and voice therein; and all dukes, marquisses, earls, viscounts, and barons of England, have been, and are comprised under the name of the baronage of England.

For the second, verily it is a laudable custom, that the son and heir apparent of an earl, should have the title of lord.

This proceeded from the natural affection of the father to his child; who, when he is a coessential part of him, vouchsafed to participate his honour with him, and to make him, as the French call it, *a consigneur*, according to that of the poet:

——— *Justa quidem series, &c.*

Yet it appeareth not that they had a denomination of any barony, but the bare title of lord, as lord WILLIAM, lord THOMAS, *&c.* Eldest son of an earl.

If such an inherent excellency, retentive faculty, and inseparability of titles, had been known in former ages, it would, in all probability, have been practised by sovereign Kings and great princes, and such titles would have continued inseparably annexed to their crowns and kingdoms: So the title of Navarre brought to the crown of France, by an heir general married to PHILIP the fair, and incorporated in his son king LEWIS HUTIN, had not been transferred by his heir general to the family of Eureux, but had continued in his two brethren succeeding him. So the said kingdom of Navarre had not been transferred, at length, to the house of Arragon, and from them to the house of Foix, by an heir general; and from them likewise to the lord of Albreth, without any respect to the duke of Nemours, the next collateral heir male; and so consequently by the heir general of Albreth to the house of Bourbon, and present King of France. Navarre. Eureux.

The like may be said of the county of Flanders, dutchies of Burgundy, Lorrain, and Bretagne; and had the dutchy of Bretagne been once inseparably adjoined to the crown of France by an heir general, the French Kings, fearing a separation, would never so carefully have procured a perpetual union thereof to their crown. Bretagne.

The pretended custom of France, that none but males could succeed in that crown, could not terrify king EDW. III, but that he pursued his claim thereunto, as next lineal heir, descended before the collateral, in right of his mother; and all England hitherto hath, and doth maintain that his claim; and that by GOD's law out of the xxvii^th^ of Numbers; *If a man die and have no son, then you shall turn his inheritance upon his daughter.* EDW. III. his claim as to France.

In the precedents to be produced, these limitations are to be required.

First, That a baron is ſummoned in regard of an heir general.

Secondly, That the ſaid baron, or deſcendant of that baron, is created earl, *ſibi & hæredibus maſculis.*

Thirdly, That the heir general have ſufficient ſupportation, made claim, and that judgment hath been twice given againſt them.

Then whether the title of the baron ſo created, continued in the collateral heir male, or deſcended to the heir general in the right lineal deſcent.

To ſeek precedents in ancient time, before the eſtabliſhment of barons by ſummons, by king HENRY III. were ſuperfluous; for in the ſimplicity of thoſe times the earls, albeit the title of barons had formerly deſcended unto them, uſed ſimply the title of their earldom, without any addition, as H. *comes Warwici*; BALDWINUS, *comes Devoniæ*; GILBERTUS, *comes Gloucestriæ & Hertfordiæ.*

The title of lord Lovain, deſcended by an heir general, to WILLIAM BOURCHIER, who was by king HENRY V. made earl of Ewe, and by that name was ſummoned to parliament; his ſon was created earl of Eſſex, *ſibi & hæredibus maſculis.* The iſſue male failed in HENRY, his grandchild, who left one only daughter ANNE, who enjoyed the titles of Lovain and Ewe, during her life; and after her death, the ſame came to WALTER DEVEREUX, earl of Eſſex, deſcended from CECILIA, ſiſter to HENRY BOURCHIER, earl of Eſſex, and reverted not to the earl of Bath, the next heir male in the collateral line.

The title of Abergavenny accrued to JOHN HASTINGS, by his mother, one of the coheirs of CANTELUPE: LAWRENCE, his grandchild, was created earl of Pembroke; when his iſſue failed in the right line, the ſaid title did not deſcend to the houſe of HASTINGS of Fenwick, who were the heir male collateral, but to REGINALD, lord Grey of Ruthyn, whoſe grandmother was ſiſter to the aforenamed JOHN HASTINGS.

Whereas it is ſaid to be the common cuſtom of England, that the elder ſon of an earl hath been, and is to this day a baron; that will hardly be proved.

For neither the elder ſon of the King had the title of baron, but was ſtiled only *primogenitus filius regis Angliæ*, until king EDWARD III. conferred the title of duke of Cornwall on his eldeſt ſon.

Neither the elder ſons of the firſt dukes had any ſuch title of baronies, neither the elder ſons of earls, whenas divers dukes and earls themſelves, as before ſpecified, had no ſuch titles, as is evident in GAVESTON, earl of Cornwall; EDMUND of Langley, earl of Cambridge; THOMAS HOLLAND, earl of Kent; THOMAS of Woodſtock, earl of Buckingham; THOMAS, duke of Clarence; JOHN, duke of Bedford; HUMPHRY, duke of Glouceſter; JOHN BEAUFORT, duke of Somerſet; GEORGE, duke of Clarence; RICHARD, duke of Glouceſter; CHARLES BRANDON, duke of Suffolk; HENRY FITZ-ROY, duke of Richmond and Somerſet. And the ſons of theſe dukes and earls, as well as other who had baronies, were but lords titulary in courteſy, courtſhip, and reputation, and not really or legally, unleſs the King did create them, or ſummoned them to parliament.

And albeit theſe had not titles of barons annexed to their earldoms, yet they were implicative barons, and their ſons were called lords, and had their precedence according to their father's honour, it being grounded not upon the title of baronies, but upon the nobility inveſted in their parent's blood, and their *propinqua potentia* to ſucceed them in their father's honour; whereupon this ground of precedency was ſet down by TIPTOFT, conſtable of England, That the eldeſt ſon of every one of a created degree, is as of the next degree under him.

If there be any ſuch inſeparable annexation, it is, as it ſeemeth, either upon ſome inherent excellency in the degree of an earl, or upon precedents of former ages, or ſome important conſequence, of ſupporting of the honourable ſtate of an earl.

By patent, THOMAS ROOS was created earl of Rutland, *ex gratia ſpeciali*, with *habendum & tenendum, gradum, dignitatem, ſtilum, titulum, nomen comi-*

tis Rutlandiæ, without any annexation of the title of Roos of Hamlake, Trusbut, and Belvoir: And as I take it, the learned in the law do hold, that no dignity can be transferred without patent, and expreſs words; ſo that the general words in the patent, *cum omnibus & ſingulis præeminentiis & honoribus*, cannot carry away the title of dignity, but concern his coronet, robes of eſtate, cloth of eſtate, *&c.*

To find precedents fitting the preſent queſtion will be as hard as it was for the French, when they would have excluded king EDWARD III. of his right in France, by his mother, upon a pretended cuſtom, which they afterwards called the *Salique* law, but we require that theſe which ſhall be produced, may have theſe limitations.

The ſtate of the queſtion, Whether the title of a barony, brought into a family, which afterwards is inveſted with an earldom, *hæredibus maſculis*, be ſo inſeparably annexed to the heirs males, that it cannot be ſeparated from them, and be transferred by the heir general into another family.

SUMMONS of a baron to parliament is an ennobling of the blood, and deriveth the nobility as the blood is derived, without words of limitation to what heirs; and ſo is an eſtate in fee-ſimple, deſcending to females in the right line, before any collateral.

That the lords Roos were antiently barons by tenure appeareth by the red book in the Exchequer, where EVERARD DE ROOS certifieth the knight's fees held of him in the time of king HENRY II.

P. DE ROOS, and WILLIAM, lord Roos of Hamlake, and ROBERT, lord Roos of Warke, were ſummoned 23 EDW. I. the names of Hamlake and Warke being added for diſtinction; for the names of their places were not mentioned in antient ſummons, but where there were divers of the ſame ſirname.

Theſe lords Roos of Hamlake continued in lineal ſucceſſion of males, until it failed in EDMUND, lord Roos, who died 21 HEN. VII. leaving his two ſiſters his heirs; ELEANOR, married to ROBERT MANNERS, knight; and ISABEL, married to THOMAS LOVEL, but died without iſſue; ſir GEORGE MANNERS, ſon of the ſaid ſir ROBERT MANNERS, was, in reſpect to his mother ELEANOR, ſummoned to parliament by king HENRY VIII. by the name of . . . . . THOMAS, his ſon, erected earl of Rutland, ſucceeded in the ſaid title of lord Roos; likewiſe HENRY, his grandchild, who left one only daughter, ELIZABETH, mother to WILLIAM CECIL, now claiming the title of lord Roos as heir to his mother; and upon the ſame ground that ROBERT MANNERS had it in regard of his mother: And that upon the ſame grounds that king EDWARD III. admitted LAWRENCE HASTINGS, ſon to the eldeſt ſiſter of AUDOMARE DE VALENCE, earl of Pembroke; *Quia illi ex ſeniore ſorore deſcendenti, ex peritorum aſſertione honoris & nominis prærogativa debetur.*

And in like caſe, firſt King HENRY the ſixth, and after King Edward the fourth, awarded the title of lord Dacres to FIENES.

King HENRY the ſeventh admitted ſir JOHN RATCLIFF to be lord Fitzwalter; to omit the lord Willoughby of Eresby, the lord Monteagle, and the lord Dacres of late time, who by the late Queen, and our Sovereign Lord, upon their gracious conſideration, have been admitted to honours, deſcending by their mothers; for that the common cuſtom of England in this caſe doth wholly favour the heir general; ſo that the claim by the heir general would ſeem current, if THOMAS lord Manners, lord Roos, had not been created earl of Rutland, *ſibi & hæredibus maſculis.*

By this creation ariſeth a ſcruple; for it is thought the barony of Roos is thereby ſo inſeparably annexed to the ſaid earldom, that it cannot be ſevered from it, but deſcends with it: whether this is ſo, is the only material and conſiderable point. Communis error facit jus.

Reaſons why a barony in fee ſhould be ſevered from an earldom entailed to the baron.

When kingdoms and great dukedoms have not that virtue, that whatſoever by heirs general hath once accrued unto them, doth thereby for ever continue inſeparably rivetted to them; I ſee not how earldoms ſhould have ſuch a retentive vertue.

The titles of the earls of March and Ulſter, lords of Trim, Clare, and Connaught, deſcended by an heir general to RICHARD, duke of York; from him to EDWARD, earl of March; and by his daughter ELIZABETH (after the death of her brother) became incorporated to the crown; RICHARD, duke of Glouceſter, deſcending from the earl of March, their common progenitor, never making claim to any of them.

5. GASTO DE FOIX. — LEONORA ARAGONIÆ, facta regina Navarræ 1479.

6. GASTO, princeps Navarræ. — JOHANNES, vicecomes Narbonenſis.

FRANCISCUS PHOEBUS, declaratus rex Navarræ, 1479. obiit 1483. — GASTO, dux Nemorenſis, occiſus Ravennæ 1512.

CATHERINA, filia unica, nupta JOHANNI ALBERTONO, unde ille rex Navarræ.

Dukedom of Lancaſter.

The dukedom of Lancaſter came unto JOHN of Gaunt, by his wife, one of the daughters and heirs of HENRY, duke of Lancaſter. His ſon HENRY knowing that as it came by a woman, it ought lawfully ſo to deſcend; when he aſſumed the crown, fearing it might be annexed to the crown, he and the whole parliament thought it juſt, that by occaſion of his aſſumption of the crown, his inheritance ſhould not be impaired nor altered, but deſcend in the ſame manner, form and condition, as it came unto him; why then, *a pari ratione*, ſhould not the earl of Rutland, receiving the title of lord Roos by an heir general, think it as juſt that it ſhould deſcend by an heir general, notwithſtanding the aſſumption of an earl's coronet?

Earldom of Hereford.

Likewiſe, whereas the earldom of Hereford came to HENRY the fifth by his mother, one of the heirs of HUMPHREY BOHUN; the parliament thought it juſt, that all his hereditaments deſcended from her, ſhould be diſſevered from the crown, and annexed to the duchy of Lancaſter; why then ſhould not the title of Roos be likewiſe diſſevered from the earldom of Rutland?

If ſuch an inherent excellency, retentive faculty, and inſeparability of titles, had been known in former ages; it would in all probability have been practiſed by ſovereign Kings and great princes, and ſuch titles would have continued inſeparably annexed to their crowns and kingdoms. So the title of Navarre brought to the crown of France by an heir general, married to PHILIP the Fair, and incorporated in his ſon King LEWIS HUTIN, had not been transferred by his heir general, to the family of Evreux, *&c. ut ſupra.*

Reaſons and precedents to ſhew, that the barony of Grey of Ruthyn, and all other of that kind, which have had their riſe and original from the King's writ of ſummons to parliament, ought to deſcend to the ſon and heir of a ſole daughter and heir.

THAT the writ of ſummons unto ROGER DE GREY, *tempore* EDW. II. did ennoble the blood, is evident from his deſcendants, who for many generations have enjoyed thereupon the title of lord Grey of Ruthyn.

The blood therefore being thus ennobled, cannot loſe its virtue, when the male line faileth, but ought to deſcend as well to the female, as the male.

Upon the ſame ground and reaſon it was, that MARGERY, ſiſter and heir to THOMAS, earl of Warwick, had the *tertium denarium de placitis comitatus Warwici* delivered to her in 27 HEN. III. as her right to that hereditary earldom, that being the uſual ceremony in thoſe days of inveſting the heir with the dignity of earl, upon the death of his or her anceſtor. Clauſ. 27 HEN. III. m. 5.

So alſo WILLIAM MAUDUIT, ſon and heir to ALICE, daughter to earl Waleran, by a ſecond wife, (after the iſſue deſcended from him by the firſt venter was extinct) having livery of the caſtle of Warwick, and all the manors, *&c.* belonging to that honour, in 47 HEN. III. was rightful earl of Warwick. Rot. fin. 47 H. III. m. 8. Rot. fin. 42 H. 3. m. 9.

So likewiſe WILLIAM DE BEAUCHAMP by deſcent from ISABEL his mother, ſiſter and heir to the ſaid WILLIAM MAUDUIT.

And upon the ſame ground it alſo was, that King EDWARD III. admitted LAURENCE HASTINGS, ſon to the eldeſt ſiſter of AYMER DE VALENCE, earl of Pembroke, (who died without iſſue male) to be earl of that county.

As alſo that the baronies of Weſtmerland and Veſcy came to the family of Clifford by an heir female.

Likewiſe that King HENRY VI. and after him King EDWARD IV. did allow unto ſir RICHARD FIENES the title of lord Dacres; and King HENRY VII. unto ſir JOHN RATCLIFF, the title of lord Fitzwalter.

Moreover, that the title of lord Lovain, deſcended by an heir general to WILLIAM BOURCHIER, who was by King HENRY V. made earl of Ewe, and by that name ſummoned to parliament. And again, that the iſſue-male failing in HENRY, his grandſon, which HENRY left one only daughter, ANNE, who enjoyed the titles of Lovain and Ewe during her life; thoſe titles after her death came to WALTER DEVEREUX, earl of Eſſex, deſcended from CICELIE, ſiſter to HENRY BOURCHIER, earl of Eſſex, and did not revert to the earl of Bathe, the next heir male in the line collateral.

Allegations why the barony of Grey of Ruthyn, which had its riſe and original by writ of ſummons to parliament, ought not to be ſevered from the earldom of Kent; EDMOND, lord Grey of Ruthyn, being created earl of Kent, to him and the heirs male of his body.

Objection 1ſt, and reaſons againſt its being ſevered from the earldom.

1. THAT the earl ſitteth in parliament not as earl, but in reſpect of his barony.

2. That if the honour and dignity of an earl ſhould not be accompanied with the title of a barony, his ſon and heir ſhould not have the title of lord, but loſe his precedency which he hath before a baron.

3. That by the common law of England, *poſſeſſio fratris de feodo ſimplici, facit ſororem eſſe hæredem*; which granted, the right of this barony muſt neceſſarily have devolved to the two aunts and heirs of RICHARD, earl of Kent, (who died without iſſue 15 H. VIII.) and thereupon be lodged in the King; becauſe honour cannot be divided, and ſo conſequently not deſcendable to Mr. LONGVILE, ſon and heir to SUSAN, ſiſter and heir to HENRY, late earl of Kent.

And for precedents in this caſe, it was alledged, that HUGH COURTNEY was ſummoned to parliament, *tempore* EDW. I. as lord Courtney, and that the iſſue male of his deſcendants ended in JOHN COURTNEY, earl of Devon, who was ſlain in the battel of Tewksbury, 12 EDW. IV. ſo that JOAN, then wife to ſir ROGER CLIFFORD, was found his ſiſter and heir; yet did not CHARLES, ſon and heir to the ſaid ROGER and JOAN, nor EDWARD CLIFFORD, ſon of the ſaid ROGER, aſſume the title of lord Courtney; but EDWARD COURTNEY, earl of Devon, who was the next heir male of that family, enjoyed the title of lord Courtney.

So

So alſo that JOHN FITZ-ALAN, earl of Arundel and lord Maltravers, left iſſue HUMPHREY, earl of Arundel and lord Maltravers, who died 16 HEN. VI. without iſſue, leaving AMICIA his ſiſter and heir, married to ſir JAMES of Ormond, knight, who never challenged the title of lord Maltravers; but that WILLIAM, earl of Arundel, couſin and next heir male to the ſaid HUMPHREY, enjoyed that honour and title.

Anſwer to theſe objections and reaſons.

To the firſt: This is a mere vulgar error, for conſultation whereof there needs no more to be ſaid, than to ſhew that all our ancient earls (as appears by Doomſday book) had no other title than HUGO, *comes*, who was earl of Cheſter; ROGERUS, *comes*, who was earl of Shrewsbury; RADULPHUS, *comes*, who was earl of Norfolk; it being long afterwards that the ſingle name of the county was added, as *comes Ceſtriæ, comes Salopiæ, &c.* And when they had by hereditary ſucceſſion obtained another, then that was added, as *comes Herefordiæ & Eſſexiæ*, and *comes Glouceſtriæ & Hertfordiæ*; the firſt that increaſed his titles being WILLIAM DE VALENCE, earl of Pembroke, who, in imitation of the French, ſtiled himſelf *comes de Pembroke, dominus de Weisford & de Montiniaco*, of which places he was only proprietary lord or owner; whereupon others following his example, added in their titles the names of ſuch baronies whereof they were poſſeſſed; and ſome likewiſe their principal lordſhips or mannors: beſides, it is apparent enough, that there is, and long hath been, a ſpecial clauſe in the patents of creation of our earls, for their place and voice in parliament.

Comes Ceſtriæ.

WILLIAM DE VALENCE, earl of Pembroke in imitation of the French.

To the ſecond: That this is likewiſe a mere conceit is alſo evident; for it is moſt certain, that many of our ancient earls and dukes had no baronies or titles of baronies in them at all, as PIERS DE GAVESTON, who was created earl of Cornwall by King EDWARD II. ANDREW DE HARCLA, made earl of Carliſle by the ſame King; WILLIAM DE CLINTON, made earl of Huntingdon by King EDWARD III. EDMUND DE LANGLEY, earl of Cambridge; THOMAS DE HOLLAND, earl of Kent; THOMAS DE WOODSTOCK, earl of Buckingham; THOMAS, duke of Clarence; JOHN, duke of Bedford; HUMPHREY, duke of Glouceſter; JOHN BEAUFORT, duke of Somerſet; GEORGE, duke of Clarence; RICHARD, duke of Glouceſter: and of later times, CHARLES BRANDON, duke of Suffolk; and HENRY FITZ-ROY, duke of Richmond and Somerſet. But though the ſons and heirs of theſe dukes and earls, as well as others who had baronies, were but lords titular, and in courteſy, courtſhip, and reputation, and in caſe of treaſon were not tried by the peers of the realm; yet they have had precedence, according to their father's honour, by reaſon of their noble extraction, and their *propinqua potentia* to ſucceed in their father's honour. Whereupon it was as a rule of precedence, eſtabliſhed by TIPTOFT, ſometime conſtable of England, That the eldeſt ſon of every one of a created degree, ſhould be eſteemed and ranked in the next degree under him.

Anſwer to that objection of *poſſeſſio fratris*.

It is not at all deny'd, but that the rule of *poſſeſſio fratris* doth by the common law carry all eſtates of lands, tenements and hereditaments, (under which name of hereditaments an hereditary office is comprehended) but in titles of honour it taketh not place; nor in the hereditary deſcent of thoſe honourable marks and badges called arms, which have anciently been, and are ſtill uſed, for the diſtinction of one family from another, and each branch of a family from the reſt of that ſtock; though in that ſingle caſe of GREY and HASTINGS it was admitted, and a judgment in the court military given thereupon; which judgment hath ever ſince been deemed injurious, and not made practicable, as is evident in the title of lord Grey of Ruthyn, which continued after the death of RICHARD, earl of Kent (who died in 15 HEN. VIII.) to his brothers and heirs of

the half blood; which otherwiſe would have been utterly ſwallowed up in the King, by reaſon that the ſaid earl had two aunts, the one married to GREYSTOCK, the other to the lord Grey of Wilton, who were his heirs at law.

To which may be added, for a full and final determination of this queſtion, the declaration of King JAMES, after a publick hearing of the diſpute touching the title of lord Roſs, challenged by WILLIAM CECIL, ſon and heir to ELIZABETH, ſole daughter and heir to EDWARD, earl of Rutland; which was, that the ſaid WILLIAM CECILL ſhould enjoy the ſaid title, and have the ancient place of the lord Roſs in parliament, and other aſſemblies; as alſo the opinion and reſolution of all the judges in England delivered in the lords houſe of parliament, 5° *Februarii, anno* 1640, in this very caſe of Mr. LONGVILE, upon the diſpute raiſed at that time by ANTHONY, earl of Kent, againſt the title and barony of lord Grey of Ruthyn, then claimed by Mr. LONGVILE. Anno 1618.

Anſwer to the precedents vouched in the caſes of COURTNEY, MALTRAVERS, and CLIFFORD.

It would be very hard to draw a concluſion of right, from matter of fact in the times of thoſe civil diſſentions betwixt the two houſes of York and Lancaſter; conſidering that thoſe then in power little favoured the right of any who were not of their party.

As for that inſtance of COURTNEY, it is manifeſt that all the three brothers of this ANNE (who was married firſt to KNEVET, and afterwards to CLIFFORD) loſt their lives in the quarrel of the houſe of Lancaſter; and therefore no marvel, the houſe of York then prevailing, that ſhe was not permitted to enjoy any honour at all; the CLIFFORDS alſo taking part with the Lancaſtrians at that time.

And for the other, viz. AMICIA, ſiſter and heir to HUMPHREY, earl of Arundel, it ſignifies nothing at all; for it was her iſſue male which ſhould have had the title of lord Maltravers; but ſhe dying childleſs, there could be no opportunity for that claim.

And as to that of HENRY, ſon to FRANCIS, earl of Cumberland, who was of late years ſummoned to parliament as lord Clifford, and ſat there in the ancient place of the lord Clifford; it was an apparent wrong to ANNE, counteſs dowager of Dorſet, then wife to PHILIP, earl of Pembroke, and ſole daughter and heir to GEORGE, earl of Cumberland, in whom the honour and barony of Clifford then virtually was, and is, who made her complaint and claim in parliament againſt it; and whoſe ſon, or daughter and heir, in caſe ſhe ſhould have any, will have a moſt clear and undoubted title to that dignity.

Having thus given a full anſwer to thoſe objections and reaſons that have been offered againſt the ſevering of a barony, which hath had its original from a writ of ſummons to parliament from an earldom, where the earldom hath been entailed upon the iſſue male; it would be conſidered what courſe hath been held in kingdoms and great dukedoms upon the like reaſon, *viz.* whether that which by heirs female hath once accrued to them, doth thereby afterwards continue for ever inſeparable.

It is plain that the title of Navarre brought to the crown of France, by an heir female, who was the wife of King PHILIP the Fair, and enjoyed by his ſon King LEWIS HUTIN, was afterwards by his heir general transferred to the family of EVREUX, though the ſame King had two brothers who ſucceeded him.

Nor (admitting that for a rule) could the kingdom of Navarre have been at length transferred to the houſe of Arragon, and after to the houſe of Foix, and thence to the lord of Albreth, without any reſpect to the duke of Nemours, the next collateral heir male, and ſo conſequently by the heir general of Albreth, to the houſe of Bourbon, and preſent King of France.

GASTO DE FOIX.——LEONORA ARAGONIÆ, facta regina Navarræ anno 1479.

GASTO, princeps Navarræ.

JOHANNES, vicecomes Narbonenſis.

FRANCISCUS PHOEBUS, declaratus rex Navarræ anno 1479. obiit anno 1483.

GASTO, dux Nemorenſis, occiſus Ravennæ anno 1512.

CATHERINA, filia unica, nupta JOHANNI ALBERTANO, unde ille rex Navarræ.

The like may be ſaid of the counties of Flanders, duchies of Burgundy, Lorrain, and Bretagne; and had the duchy of Bretagne been once inſeparably adjoined to the crown of France by an heir female, the French King's fearing a ſeparation, would never ſo carefully have procured a perpetual union thereof to the crown.

The titles of the earls of March and Ulſter, lords of Trim, Clare and Connaught, deſcended by an heir general to RICHARD, duke of York; from him to EDWARD, earl of March; and by his daughter ELIZABETH (after the death of her brother) became incorporated to the crown; RICHARD, duke of Glouceſter, deſcending from the earl of March, their common progenitor, never making claim to any of them.

The dukedom of Lancaſter came unto JOHN of Gaunt by his wife, one of the daughters and heirs of HENRY, duke of Lancaſter; his ſon and heir HENRY knowing that as it came by a woman, it ought lawfully ſo to deſcend, when he aſſumed the crown, fearing it might be annexed to the crown; he and the whole parliament thought it juſt, that by occaſion of his aſſuming the crown, the inheritance ſhould not be impaired nor altered, but deſcend in the ſame manner, form, and condition as it came unto him.

Earldom of Hereford.

Likewiſe, whereas the earldom of Hereford came to King HENRY V. by his mother, one of the heirs of HUMPHREY DE BOHUN, the parliament thought it juſt, that all his hereditaments deſcended from her, ſhould be diſſevered from the crown, and annexed to the duchy of Lancaſter.

But here it may be ſaid, that notwithſtanding this reſolution of the judges in parliament, in the caſe of Mr. LONGVILE, and the judgment then given by the houſe of lords at that time; whereupon his late Majeſty (King CHARLES the firſt) iſſued forth his writ of ſummons to the ſaid Mr. LONGVILE, by the title of lord Grey, and that he ſat accordingly; * the earl of Kent may bear the title of lord Ruthyn, as his anceſtors have heretofore done, in ſuch ſort as the earl of Rutland was permitted to bear the title of lord Roos of Hamlake, in the time of King JAMES, (and his ſucceſſors have ſince done) though the title of lord Roos was then adjudged to WILLIAM CECILL, as hath been already inſtanced.

Roos of Hamlake.

Anſwer.

That the King, who is the fountain of honour, may add titles of honour to any earl, is not to be denied; but to add the title of lord Ruthyn to the earl of Kent muſt needs be very improper, if lawful; in regard that by that judgment in parliament, it is already fixed in Mr. LONGVILE; for though *in terminis* the

* Query, Whether this was not altered after the argument made.

title adjudged to Mr. LONGVILE, upon that his claim, was lord or baron Grey, as deſcended to him by virtue of that ſummons to ROGER DE GREY, *tempore* EDW. II. which firſt ennobled the blood; yet becauſe the poſterity of that lord Grey, reſiding at their caſtle of Ruthyn in the county of Denbigh, were by the vulgar called only lord Ruthyn, for brevity of ſpeech, inſtead of lord Grey of Ruthyn; and there being no other perſon meant or intended by that appellation, than the lord Grey of Ruthyn, it muſt needs be moſt abſurd to raiſe two titles of honour or baronies from that one ſingle ſummons; for the true ſtate of this queſtion is *rei*, and not *nominis*; and therefore it being well known, that the perſon who would be ſtiled lord Ruthyn cannot at all pretend to that title, but as deſcended from the ſaid ROGER DE GREY, whoſe ſeat was the caſtle of Ruthyn, and that this title of honour, being but of one ſingle barony, and founded upon that ſummons, whether called lord Grey, lord Grey of Ruthyn, or lord Ruthyn, is ſtill but one and the ſame: that two perſons then ſhould be admitted to a title to one and the ſame thing, by ſeveral names, and only occaſioned from the various expreſſions of the vulgar in their common dialect, wherein they take their own liberty, muſt needs ſeem very ſtrange. Lord Ruthyn.

Who knows not that ſometimes, in vulgar expreſſion, the name of the place where the perſon firſt ſummoned hath had his reſidence, merely to diſtinguiſh him from another perſon of the ſame name, is attributed as his title of honour; as in the caſe of THOMAS MULTON, who being firſt ſummoned to parliament by that name only, was afterwards, *ſcil. in* 1 EDW. II. ſummoned by the name of THOMAS MULTON of Egremond; and that this did after produce the title or honour of lord Egremond, which ſtill continues in the deſcendents of that family.

So of JOHN CHARLETON, who, though firſt ſummoned to parliament by the name of JOHN CHARLETON alone; after, *viz.* in 30 EDW. III for diſtinction ſake from another JOHN CHARLETON, was ſummoned by the name of JOHN CHERLETON DE POWYS, which did produce the title of lord Powys. Lord Powys.

And it is as apparent, that anciently, when earldoms were officiary, (and not merely titular as now they are) the earl of Suſſex was by the vulgar called earl of Chicheſter, becauſe of his reſidence there; and afterwards the earl of Arundel by reaſon of his habitation at the caſtle of Arundel. Earl of Arundel.

So likewiſe the old earls of Derby were called earls of Tuttesbury, by reaſon that the caſtle of Tutbury in Staffordſhire was their ſeat. The earls of Pembroke called earls of Striguil, becauſe they dwelt at Striguil caſtle. Earl of Striguil.

Yet it would have been ſtrange that another perſon ſhould then have taken upon him, or the King have given him the title of earl of any of thoſe counties; it being well known, that theſe perſons were the real *comites*, or earls of each of them.

So the old biſhops of Coventry and Lichfield were ſtiled *epiſcopi Ceſtriæ*, becauſe of their reſidence in that city, ſituate in their dioceſs, though they had no cathedral there.

These

These are written out of the parliament rolls themselves by * Mr. WILLIAM DUGDALE, as the

Summonitiones ad parliamenta.

Clauſ. 23. EDW. I. in dorſo m. 9.	REGIN. DE GREY.
Clauſ. 24. EDW. I. m. 7. in dorſo.	REGIN. DE GREY.
Clauſ. 25 EDW. I. m. 25. in dorſo.	REGIN. DE GREY. JOHAN. DE GREY.
Clauſ. 27. EDW. I. m. 18. in dorſo.	HENR. DE GREY. REGIN. DE GREY.
m. 12.	Cum equis et armis. JOHAN. DE GREY. REGIN. DE GREY.
Clauſ. 28. EDW. I. m. 17. in dorſo.	REGIN. DE GREY.
Clauſ. 30. EDW. I. m. 13. in dorſo.	REGIN. DE GREY.
Clauſ. 32. EDW. I. in dorſo m. 2.	REGIN. DE GREY.
Clauſ. 33. EDW. I. in dorſo m. 21.	REGIN. DE GREY.
Clauſ. 34. EDW. I. in dorſo m. 2.	REGIN. DE GREY.
Clauſ. 1. EDW. II. in dorſo m. 19.	REGIN. DE GREY.
Ibid. m. 8.	HENR. DE GREY.
Clauſ. 2. EDW. II. in dorſo m. 13. in cedula.	JOHAN. DE GREY.
Ibid. m. 2.	RIC. DE GREY.
Clauſ. 3. EDW. II. in dorſo m. 17.	RIC. DE GREY. JOHAN. DE GREY.
Clauſ. 5. EDW. II. in dorſo m. 25.	JOHAN. DE GREY. RIC. DE GREY.
Clauſ. 6. EDW. II. m. 31 in dorſo.	JOHAN. DE GREY. RIC. DE GREY.
Clauſ. 17 EDW. II. in dorſo m. 27.	JOHAN. DE GREY. RIC. DE GREY.
Clauſ. 2. EDW. II. in dorſo m. 14.	JOHAN. DE GREY. RIC. DE GREY.
Clauſ. 12. EDW. II. in dorſo m. 2.	JOHAN. DE GREY. RIC. DE GREY.
Clauſ. 13. EDW. II. in dorſo m. 14.	JOHAN. DE GREY. RIC. DE GREY.
Clauſ. 14. EDW. II. in dorſo m. 23.	JOHAN. DE GREY. RIC. DE GREY.
Clauſ. 15. EDW. II. m. 16. in dorſo.	RIC. DE GREY.
Clauſ. 18. EDW. II. in dorſo m. 34.	RIC. DE GREY.
Clauſ. 1. EDW. III. part 2. m. 20. ☞	HENR. DE GREY. ROGER DE GREY. RIC. DE GREY DE . . . . .
Clauſ. 2. EDW. III. in dorſo m. 22. ☞	HENR. DE GREY. ROGER DE GREY. Fratres Ibid. m. 23.

Vide 16. m. 21. de concordia inter eos pro caſtro de Ruthyn.

W. DUGDALE.

ROGER DE GREY had ſummons to parliament from the 17th of EDW. II. to the 25th of EDW. III. incluſive. Sometimes the writ was directed ROGERO DE GREY *ſeniori*.

REYNALD, the ſon of ROGER, had ſummons to parliament, from 17 EDW. III. to 27 EDW. III. incluſive, by the title of REYNALD DE GREY. From the 28th of EDW. III. to the 11th of RIC. II. incluſive, he was ſummoned by the title of REYNALD, lord Grey of Ruthyn, to diſtinguiſh him from another REYNALD GREY.

And ſo was EDMOND DE GREY, from 23 HEN. VI. to 2 EDW. IV. ſoon after which he was created earl of Kent.

* Sir WILLIAM DUGDALE, not knighted till May 25, 1677. by King CHARLES II. in the old bed-chamber at Whitehall, being the day after he was created garter king of arms.

Die Mercurii 30 *Decembris*, 1640.

Upon hearing of the cauſe between CHARLES LONGVILE, Eſq; and the right honourable the earl of Kent, in the upper houſe of Parliament, concerning the baronies of Ruthyn and Haſtings; it was ordered by the lords ſpiritual and temporal in parliament aſſembled, That upon Monday come ſevennight the buſineſs ſhall come to judgment before their lordſhips; and the counſel ſhall deliver unto the clerk of the parliament, forthwith, to be kept by him in the houſe, all ſuch precedents and records, as have been urged on both ſides, that their lordſhips may have recourſe unto them, as they ſhall ſee cauſe; and that all ſuch lords as pleaſe ſhall have briefs delivered unto them of the whole ſtate of the cauſe from both the parties.

What follows are arguments on both ſides in this caſe, in the hand-writing of Mr. KING, Lancaſter Herald. Query, if not the briefs, &c.

CHARLES LONGVILLE, Eſq; plaintif,
ANTHONY, earl of Kent, defendant.

Concerning the dignities of lord Haſtings, and lord Grey of Ruthyn. The caſe concerning the matter in queſtion ſtands thus:

The caſe thus ſet forth by the plaintiff's petition.

JOHN, lord Haſtings (whoſe father was ſummoned to parliament 49 H. III.) had, *tempore* EDW. II. two wives; by the firſt of them he had iſſue JOHN, lord Haſtings, and ELIZABETH; and by the ſecond, HUGH HASTINGS, whoſe iſſue male continued till of late.

JOHN HASTINGS, ſon of the ſaid JOHN, after he had divers times ſat in parliament, died, leaving iſſue LAURENCE, who was created earl of Pembroke to him and the heirs male of his body; which LAURENCE had iſſue JOHN, earl of Pembroke, who died 49 EDW. III. leaving iſſue JOHN, earl of Pembroke, who died 13 R. II. without iſſue.

The ſaid ELIZABETH, married to ROGER, lord Grey, who was ſummoned to parliament 20 EDW. II. and had iſſue by her REGINALD, lord Grey of Ruthyn, who died 12 R. II. leaving iſſue REGINALD, lord Grey of Ruthyn, unto whom, upon the death of the ſaid JOHN, the laſt earl of Pembroke, the dignity of lord Haſtings did deſcend and come, as heir and grandchild of the ſaid ELIZABETH.

The ſaid REGINALD GREY died 19 HEN. VI. having iſſue JOHN, who left iſſue EDMUND, which EDMUND, in 5 EDW. IV. was created earl of Kent, to him and the heirs male of his body.

This EDMUND had iſſue GEORGE, and two daughters, from which two daughters divers now living are deſcended.

Which GEORGE had two wives, by the firſt of whom he had iſſue RICHARD, earl of Kent; and by the ſecond, HENRY and ANTHONY.

The ſaid RICHARD, after he had divers times ſat in parliament, died without iſſue; the petitioner is by divers meaſne deſcents heir general; and from the ſaid ANTHONY the defendant is lineally deſcended.

The queſtions, as they were then ſtated by ſir JOHN BANKS, the King's attorney-general, were two. The queſtions ſtated by the attorney-general.

1. Whether there be any ſuch title or barony of lord Ruthyn.

2. Admit there be ſuch title, yet when RICHARD, earl of Kent, unto whom the titles of lord Haſtings and Ruthyn belonged, died without iſſue; whether they did reſort to HENRY, his brother of the half blood, and ſo to the petitioner;

tioner; or whether by the rule of *poſſeſſio fratris*, the ſame titles fall upon his aunts of the whole blood, *viz.* ANNE and ELIZABETH, and ſo are in the King's diſpoſal.

As to the firſt queſtion, the reaſon which is made of the doubt is, becauſe that ROGER GREY and REGINALD his ſon, in their firſt ſummons to parliament, were named only GREY, and the addition of Ruthyn came in afterwards, in the time of EDW. III. to diſtinguiſh that REGINALD from another REGINALD GREY, and ſo Ruthyn only an addition, not a name of the barony.

To this was anſwered.

1. That it is clear, that by the ſummons of ROGER, there was a barony in fee ſimple created, and that the petitioner CHARLES LONGVILE is heir to that barony: ſo that the queſtion whether the name be lord GREY, or lord RUTHYN, or lord GREY of Ruthyn, is only *queſtio nominis*, and not *rei*.

2. The title of Ruthyn, though it were only firſt added for diſtinction ſake, yet uſage and cuſtom hath given that barony that name; ſo that when we ſpeak of lord Ruthyn, it is clearly known, what and who is meant thereby: and in all caſes of baronies by writ, uſage and cuſtom hath, and may give it the name.

1. Sometimes it gives the ſirname of the party ſummoned, to be the name of the barony, though the ſirname came after to be changed, as DE LA WARRE, DACRES, FITZ-ALAN, MALTRAVERS, *&c.*

2. Sometimes from the addition, as in this caſe of the barony in queſtion. It hath,

HENRY, lord Haſtings of Bergavenny, ſummoned to parliament 49 H. III.

ISABEL, daughter to WILLIAM VALENCE, earl of Pembroke, 1 wife.

JOHN, lord Haſtings of Bergavenny, died 6 E. II.

ISABEL, daughter of HUGH LE DESPENCER, earl of Wincheſter, 2 wife.

ROGER DE GREY ſumm. to parliament 20 E. II.

ELIZABETH, daughter of JOHN, lord Haſtings.

JOHN, lord Haſtings of Bergavenny, died 18 E. II.

HUGH HASTINGS.

REGINALD, lord Grey of Ruthyn, died 12 R. II.

LAURENCE, created earl of Pembroke by king EDW. III. died 22 E. III.

HUGH HASTINGS.

REGINALD, lord Grey of Ruthyn, Haſtings, and Weysford, died 19 H. VI.

JOHN, earl of Pembroke, died 49 E. III.

HUGH HASTINGS.

HUGH HASTINGS, died without iſſue.

EDWARD HASTINGS, who challenged the arms of HASTINGS in the court military, againſt REGINALD GREY of Ruthyn, 8 H. IV.

Sir JOHN GREY, knight, died in his father's life time, 18 H. VI.

JOHN, earl of Pembroke, died 13 R. II. without iſſue.

A

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EDMUND, created earl of Kent by king EDW. IV. died 4 H. VII.

ANNE, daughter of RICH. earl Rivers. 1 wife.	GEORGE, earl of Kent, died 20 H. VII.	CATHERINE, daughter of WILLIAM, earl of Pembroke, 2 wife.	ELIZABETH, wife of sir ROB. GREYSTOCK, knt.	ANNE, wife to JOHN, lord Grey of Wilton.

RICHARD, earl of Kent, died 15 H. VIII. without issue.

1 HENRY GREY, who by reason that his brother had much wasted the estate, assumed not the title of earl, and died anno 1562. 4 ELIZ.

2 ANTHONY GREY of Brandspeth.

From these two daughters are divers persons descended.

GEORGE GREY.

HENRY GREY, of Wrest.

ANTHONY GREY, rector of the church of Burbach *in com. Leicest.* and earl of Kent, anno 1640

1 REGINALD GREY, who re-assumed the title of earl of Kent, and died a° 1572, 14 ELIZ. without issue.

2 HENRY, earl of Kent, died a° 1614, without issue.

3 CHARLES, earl of Kent, died a° 1625.

SUSAN, wife to sir MICHAEL LONGVILE, knt.

HENRY, earl of Kent, died anno 1639, without issue.

CHARLES LONGVILE, esq; who claimed the title of lord Grey of Ruthyn, in parliament.

It hath ever been the name of Ruthyn; and the like hath been used in divers other instances of that sort, *viz.*

THOMAS MULTON, first summoned by the name of THOMAS MULTON; after, in 1 EDW. II. to distinguish him from another THOMAS MULTON, he was summoned by the name of THOMAS MULTON, of Egremond; and this hath produced the title of lord Egremond, which still continues in the descendents of that family.

JOHN CHARLETON was summoned by the name of JOHN CHARLETON; after, for distinction sake, in 30 EDW. III. he was summoned by the name of JOHN CHARLETON of Powys; and this hath produced the title of lord Powys.

To the second question it was answered, That though the rule of *possessio fratris de feodo simplici facit sororem esse hæredem*, be true in cases of such inheritances as are without the man, whereof a man may gain a title by the possession, as of lands, offices, rents, advowsons, uses, *&c.* yet it is not appliable to cases of honour. Therefore in as much as the heirs are aunts to RICHARD,

who was laſt ſeized, they were not to ROGER, in whom the honour began, the honour could not fall upon them, but upon the petitioner, who is right heir to ROGER, in whom the barony began.

The reaſons thereof being theſe;

The reaſons. 1. Becauſe in caſe of honour, he who will make a title, muſt make himſelf heir to him in whom the honour began, and not to him who did laſt uſe the name, otherwiſe he cannot be entitled to the precedence.

2. Secondly, from the nature of the inheritance in queſtion; for that rule of *poſſeſſio fratris* is appliable only to ſuch things, whereof there may be a greater poſſeſſion gained than that which deſcends, which cannot be in caſe of a title of honour; for honour is as an inheritance inherent in the blood, an inheritance whereof an action auncestrel lies, not an inheritance whereof a man is as much in poſſeſſion, before he is called lord, as after.

3. The precedents of all times do make it clearly appear, that the rule of *poſſeſſio fratris* is not appliable to the deſcent of honour; the common law doth not apply the ſame, unleſs either of creation, or of deſcents to honour, as it doth to other more groſs inheritances.

This particularly appears,

1. In the higheſt title of dignity, in caſe of the King, the rule of *poſſeſſio fratris* holds not.

2. In the loweſt degree of dignity, gentility, or bearing of arms, is not carried by the rule of *poſſeſſio fratris*, the brother by the half blood ſhall bear the armes without a difference, notwithſtanding the poſſeſſion of the elder brother.

3. In caſe of baronies by writ, they have gone to the brother of the half blood, contrary to the rule of *poſſeſſio fratris*, in theſe enſuing inſtances, and divers other, *viz.*

In the deſcent of the lords Fitzwalter.
In the deſcent of the lord Mortimer, of Wigmore.
In the deſcent of the lord Welles.
In the deſcent of the lord Fauconbridge.
In the deſcent of the lord Ogle.
And in the deſcent of the lord de la Warre twice, upon ſeveral ſolemn debates for precedency, and contrary to the opinion of ſome of the heralds; which proves that the matter did not paſs *ſub ſilentio*.

There have been objected only two precedents againſt it.

1. That when RICHARD BEAUCHAMP, earl of Warwick, lord Elmeley and Hanſlap, had three daughters by one wife, and HENRY, after earl of Warwick, and ANNE by a ſecond wife, and died; and that HENRY died without iſſue; ANNE, his ſiſter of the whole blood, did enjoy the earldom: which, if the rule of *poſſeſſio fratris* had not held, had fallen upon all the daughters, and ſo had been in the King's diſpoſal, as is objected.

Unto which was anſwered,

1. That there was a patent by the King, *anno* 27 HEN. VI. which conferred the earldom upon ANNE, otherwiſe ſhe had not had it; which proves, that the rule of *poſſeſſio fratris* did not hold; for if ſo, what needed a patent?

2. In that caſe, the baronies of Elmeley and Hanſlap, for which there was no ſuch declaration by the King, were loſt among the ſiſters, though of the half blood.

Unto the ſecond objection, *viz.* that the pedigree of Haſtings proves, that the title of Haſtings came to Grey by *poſſeſſio fratris*, was anſwered,

1. That the deſcent of Haſtings is doubtful, and croſſed by the heralds themſelves. *Vide* MILLS, *fol.* 1094.

2. It is but one inſtance and for one barony, and is croſſed by the conſtant practice; and particularly by the family of the earls of Kent, who, ſince the death of RICHARD, earl of Kent, have ſtill born the titles of Ruthyn and Haſtings.

On the part of ANTHONY, earl of Kent, the defendant, it was replied:

That caſes of this nature will be beſt decided by precedents; for titles of honour are not in all points to be regulated according to the courſe of the common law, as the lord COKE himſelf acknowledgeth; for where a man is generally called by writ to the parliament, he hath a fee ſimple in the barony, without any words of inheritance, and thereby his blood is ennobled to him and his heirs lineal.

The precedents herein offered were of two ſorts:

1. The firſt, in caſes where there have been divers heirs general.
2. The ſecond, where but one ſole heir female; and yet in both theſe caſes the baronies have gone along with the earldom in the male line.

For the firſt:

MICHAEL DE LA POOLE was ſummoned to parliament, *anno* 43 EDW. III. as lord de la Poole, who had iſſue MICHAEL, and died 13 RIC. II.

MICHAEL DE LA POOLE, his ſon, was in *anno* 1385, 9 R. II. created earl of Suffolk, to him and the heirs male of his body; and had iſſue MICHAEL DE LA POOLE, who was ſlain at the battel of Agincourt, 3 HEN. V. leaving three daughters and heirs, which never challenged the title of lord de la Poole; but WILLIAM, his brother, (uncle to thoſe three daughters) who was afterwards made marquis and duke of Suffolk, had the ſame.

ROGER STRANGE, of Knockin, was ſummoned to parliament in 3 R. II. whoſe ſole heir female was married to Stanley. THOMAS, lord Stanley and Strange, of Knockin, who deſcended from her, was created earl of Derby, 1 HEN. VII. from whom HENRY, earl of Derby, deſcended; which HENRY had two ſons, FERDINANDO and WILLIAM, and died *anno* 1593.

The ſaid FERDINANDO died in *anno* 1594, leaving iſſue three daughters, *viz.* ANNE, FRANCES, and ELIZABETH; and the now earl of Darby did for divers years enjoy that title of lord Strange, of Knockin, until his ſon, the now lord Strange, was of late ſummoned to parliament by that name.

RICHARD, lord Talbot, was ſummoned to parliament in 28 EDW. I. from whom deſcended John, lord Talbot, who in 20 HEN. VI. was created earl of Shrewsbury, to him and to the heirs male of his body. From the ſaid JOHN, by divers meaſne deſcents, deſcended GILBERT, earl of Shrewsbury, who had iſſue three daughters and heirs; MARY, the now counteſs dowager of Pembroke; ELIZABETH, the counteſs dowager of Kent; and ALATHEA, the now counteſs of Arundel.

The ſaid GILBERT died *anno* 1602; upon whoſe deceaſe the ſaid earldom deſcended to EDWARD, earl of Shrewsbury, who enjoyed thoſe titles of lord Talbot, and died anno 1617, without iſſue; after whoſe death JOHN, now earl of Shrewsbury, next heir male to JOHN, firſt earl of Shrewsbury, enjoys the ſaid title of lord Talbot with the earldom.

For the other ſort of precedents, where there hath been one ſole heir female;

JOHN MALTRAVERS was ſummoned to parliament in 1 EDW. III. from whom deſcended ALIANORE, a ſole daughter and heir, who was married to JOHN FITZ-ALAN; whoſe grandchild JOHN, lord Maltravers, had iſſue two ſons, JOHN and WILLIAM, and died: the ſaid JOHN was declared earl of Arundel in 11 HEN. VI. and died 13 HEN. VI. having iſſue HUMPHREY, earl of Arundel, and AMICIA.

HUMPHREY, earl of Arundel, dying without iſſue, his ſiſter ſurvived him, and was married to JAMES, earl of Ormond; and yet, notwithſtanding neither her husband nor ſhe had the dignities of Maltravers; but the ſame, after the death of the ſaid HUMPHREY, went with the earldom to his uncle WILLIAM, earl of Arundel, in whoſe line it continued.

ROBERT CLIFFORD was ſummoned to parliament 27 EDW. I. from whom deſcended, by divers meaſne deſcents, HENRY, lord Clifford, who in 17 HEN. VIII. was created earl of Cumberland, to him and to the heirs male of his body. The ſame HENRY had iſſue GEORGE and FRANCIS; GEORGE had iſſue FRANCIS, ROBERT, and ANNE.

FRANCIS and ROBERT died without iſſue, and their ſiſter and ſole heir ANNE is now counteſs of Pembroke and Montgomery; notwithſtanding which, the barony of lord Clifford, after the death of FRANCIS and ROBERT, did go unto FRANCIS, the brother of the ſaid GEORGE, earl of Cumberland, who died *anno* 1630; and after his death the ſame came to HENRY, now earl of Cumberland, whoſe ſon is now ſummoned to parliament as lord Clifford.

ROBERT FITZWALTER was ſummoned to parliament *anno* 23 EDW. I. whoſe heir female was matched into the family of the RATCLIFFS; from which heir female, by divers meaſne deſcents, ROBERT, lord Fitzwalter, who was created earl of Suſſex 21 HEN. VIII. to him and the heirs male of his body was deſcended; which ROBERT, earl of Suſſex and lord Fitzwalter, had iſſue HENRY and HUMPHREY, and died.

HENRY had two wives, by the firſt of which he had iſſue HENRY, who had iſſue THOMAS, late earl of Suſſex, who died without iſſue.

By his ſecond wife he had iſſue FRANCES, who was married to ſir THOMAS MILDMAY, from whom ſir HENRY MILDMAY is deſcended; notwithſtanding which, EDWARD, now earl of Suſſex, being the heir male of the ſaid ROBERT, earl of Suſſex, enjoys the title of lord Fitzwalter.

Moreover,

Authorities urged on the behalf of ANTHONY, earl of Kent, def^{t}.

On the part of ANTHONY, earl of Kent, defendant, it was further urged by way of proof, that there might be a *poſſeſſio fratris* in a dignity.

Mich. 48 EDW. III. *fol.* 30. ſir RALPH EVERDON there deſired to be diſcharged of the grand jury, in regard he was a baron; whereupon the judge there asked him, whether he had come to the parliament, and ſate there as a baron; which being averred, he was thereupon diſcharged.

Hill. 35 HEN. VI. *fol.* 46. in an attaint one of the grand jury challenged himſelf, for that his anceſtors were barons, and lords of the parliament, and have had their place in the ſame houſe of parliament.

Regiſt. Orig. 287. the King there certifies the judges of the bench, that ſuch a one was one of the barons *ad parliamentum ſuum veniendum.*

COKE *ſur* LITTLETON, *fol.* 17. the livery of a writ of ſummons makes not one a baron, unleſs he ſit in parliament.

Out of which authorities may be obſerved, that the poſſeſſion of ſuch dignities created by writ, is the ſitting in parliament.

The

The poſſeſſion of a parſon in his benefice, is his induction; of a dean or prebend, his inſtallation, whereby they have *ſtallum in choro, & vocem in capitulo*; of a biſhop, his inthronization; which have ſome reſemblance unto this caſe.

The objections then made againſt a *poſſeſſio fratris* were threefold:

Firſt, by reaſon; Secondly, by authority; 3dly, by precedent.

Objections made on the behalf of Mr. LONGVILE, the Plantiff.

1. For reaſon it was ſaid, that the writ of ſummons or patent did ennoble the blood; and that there could be no more poſſeſſion of a dignity, than of the blood.

2. That *poſſeſſio fratris* was of things without a man, and not within him.

3. That it held not in the caſe of the King, the higheſt dignity; nor in the caſe of arms, in the loweſt dignity, of a gentleman, where the arms go to the heir male, and not to the heirs female.

And for authorities were urged the lord COKE *ſur* LITTLETON, *fol.* 15, and RATCLIFF'S caſe, in his third reports.

For precedents, were cited that of the lord Ogle, the earl of Newcaſtle, and the lord de la Warre; and by way of admittance it was alledged, that though it were granted there might be a *poſſeſſio fratris*, yet in that caſe of RICHARD, earl of Kent, there was none, in regard he was ſummoned to parliament, and ſat there as earl of Kent only.

To theſe objections the counſel on the behalf of ANTHONY, earl of Kent, replied,

1, 2. That though the blood be ennobled, yet the taking of the place in parliament is an external act.

3. And as to that in the caſe of the King, it is an eſpecial law of the crown, and therefore not to be drawn in conſequence. And as to the bearing of arms by the heir male of a gentleman excluding the female, it was otherwiſe adjudged in the caſe of REGINALD, lord Grey of Ruthyn, againſt ſir EDWARD HASTINGS, his grandchild, and heir of the ſaid HUGH HASTINGS, in 8 HEN. IV. after many years ſuit.

And as to the authorities, it was anſwered that they were put obiter, no reſolution of any judges, nor other book cited to warrant them.

Touching the precedents, and firſt of the lord Ogle.

It was replied, that the caſe was miſcited; the truth being, that ROBERT, lord Ogle, had two wives; by the firſt of which he had iſſue ROBERT and MARGARET, and by the ſecond CUTBERT.

ROBERT, the father, died; ROBERT, his ſon, ſucceeded him in the barony, and died without iſſue.

For that concerning the earl of Newcaſtle, his pretended reſtitution, the caſe was ſaid to be thus:

The ſaid CUTBERT, lord Ogle, had iſſue two daughters; JANE, married to EDWARD, earl of Shrewsbury; and CATHARINE, to ſir CHARLES CAVENDISH, father to the now earl of Newcaſtle.

CUTBERT died, leaving his two daughters his heirs; by reaſon whereof the barony not being dividable, was in the King's hands to diſpoſe.

The ſaid counteſs of Shrewsbury alſo died after her father, and without iſſue; after whoſe death, the ſaid lady CATHARINE was, by patent, *anno* 1628, made baroneſs Ogle; ſo that here was no reſtitution, but a new creation.

See the patent of her creation in the Appendix.

Touching

Touching that of the lord de la Warre.

Coke's 11th Rep. p. 1. The caſe is likewiſe miſcited, for there was no half blood in the caſe; and, accordingly, no mention made of any half blood in the petition in parliament, *anno* 39 ELIZ. in that caſe.

And in anſwer to what was urged, that there could be no *poſſeſſio fratris* in the caſe of RICHARD, earl of Kent, becauſe he was ſummoned as earl of Kent only; it was replied, that where an earl hath divers baronies, he is always ſummoned by the higher title; and yet it follows not, but that his other dignities are inherent in him, and that he ſits in parliament in the capacity of them all, though in regard he being but one perſon, can have but one place, and ſo ſits in the place belonging to his earldom, as being the higheſt.

The queſtions propoſed to the heralds in the caſe of the lord Grey, of Ruthyn.

If a baron, by writ or feodal, be created an earl, to him and the heirs males of his body; and the ſaid earl hath iſſue a ſon and two daughters by his firſt wife, and a ſon by the ſecond wife, and dieth.

The eldeſt ſon is ſeiſed of the earldom and barony, and ſits in the parliament, and dieth without iſſue:

1. Whether the barony ſhall go to the ſecond ſon, or to the daughter?

Upon diligent ſearch made in the office of arms, we do not for the preſent find any precedent that doth parallel this queſtion, where it is touching the half blood.

2. When a barony is to deſcend unto two daughters, whether the ſame have been in his Majeſty's diſpoſe?

When a baron dies, and leaves daughters and coheirs, we find divers precedents touching the diſpoſition of the barony.

1. Where there were two daughters and coheirs, the eldeſt daughter's iſſue male had the barony: for example,

NORTON, baron of Alfreton.
SANDWICH, baron of Folkſtone.

2. Where there were daughters and coheirs, and the youngeſt daughter's iſſue male had the barony:

The lord CROMWELL, *tempore* HEN. VI.
The barony of Moulton.

3. Where there were daughters and coheirs, and the King did not diſpoſe of the barony to the iſſue of either of them:

CHARLTON, lord Powys.
The lord TREGOSE.
The lord MAULEY.
The lord MORWICK.
The lord MUSCHAMP.
The lord CLAVERING.

Whether Ruthyn be a barony or not; or whether local, or by writ?

We do not find that Ruthyn is a local barony; but do conceive, that it was uſed merely to diſtinguiſh thoſe barons from others of the ſame ſurname.

10 Edw. I. 4. The King grants unto REGINALD GREY the caſtle of Ruthyn, and hundred of Diſſenfloyt, *inter alia*, in fee; and the ſame is holden *in capite* by three knights fees.

To the first question,

How the dignity of lord Hastings came to REGINALD, lord Grey of Ruthyn?

We find that HENRY, lord Hastings, was summoned to parliament 49 HEN. III. and had issue JOHN, lord Hastings, who had two wives; by the first whereof he had issue JOHN, lord Hastings, and ELIZABETH, that was married to ROGER, lord Grey. From the said JOHN, lord Hastings, descended JOHN, earl of Pembroke, who died 13 R. II. without issue; after whose death, REGINALD, lord Grey of Ruthyn, grandchild of the said ELIZABETH, of the whole blood to the said JOHN, lord Hastings, was found cousin and heir to the said earl of Pembroke, and thereupon was stiled lord Hastings, Weysford and Ruthyn, as by several instances doth appear. See Mr. PHILPOT's book, fol. 7. and copies of original deeds.

Vide the charter of creation of EDMUND, earl of Kent, where he is stiled, *Dominus de Hastings, Weysford, & Ruthyn.*

To the second question,

Concerning the descendants of EDWARD HASTINGS, who was competitor with REGINALD, lord Grey of Ruthyn, for the arms of HASTINGS?

We certify, that the said EDWARD was lineally descended from the abovesaid JOHN, lord Hastings, by his second wife; and that the male line continued till Queen MARY's time; and that then the two daughters and coheirs of sir HUGH HASTINGS married into the families of BROWNE and STRANGE. The earl of Huntingdon's pedigree, and the vis. Norf.

To the third question, the copy subscribed with some abstractions.

To the fourth question;

We conceive that the earldom of Warwick was an earldom in fee, and came into the family of BEAUCHAMP, by the daughter and heir of WILLIAM MAUDUIT; and that RICHARD BEAUCHAMP, earl of Warwick, *temp.* HEN. VI. had two wives; by the first he had three daughters, and by the second a son and a daughter; which son leaving issue a daughter, that died in her infancy, ANNE, his only sister of the whole blood, became his heir; of whom JOHANNES ROSSUS *Warwicensis,* in an ancient roll of the earl of Warwick, useth these words; *Nobilissima* ANNA *virtutum indeficiens exemplar præfati ducis* HENRICI, *ex utraque parente soror, post mortem neptis, suo speciosissimo infantulo* ANNÆ *prædicti ducis* HENRICI *unico filiæ & hæredis totius dominii Warwici cum pertinentiis immediata hæres & comitissa.* But how far these words may extend to the earldom and baronies, we refer to your judgment. Whole blood.

For ZOUCH.

We certify that EDWARD, lord Zouch, who died *tempore regis* CAROLI, left two daughters his heirs, one whereof married to TATE, the other to LEIGHTON, and that the barony is yet undisposed of.

Place of WEST.

We certify, that we find that REGINALD WEST did petition for the ancient place of lord de la Ware.

But we do not find what was granted thereupon, that he had the place of the ancientest lord de la Ware.

JOHN, lord de la Ware, had iſſue JOHN and CATHERINE, and died; to which CATHERINE, by divers meſne deſcents, JOHN GRIFFIN was heir.

JOHN, the ſon, had iſſue ROGER; ROGER married two wives; by the firſt he had a ſon; by the ſecond a daughter, whoſe grandchild REGINALD WEST was.

JOHN, the firſt lord de la Ware, and JOHN, his ſon, levy a fine of the manor of Wickware, *inter alia*, to the uſe of the ſaid JOHN, the firſt, for life. The remainder to JOHN, the ſon, and MARGARET, his wife, and the heirs of the body of the ſaid JOHN, the ſon, on the body of the ſaid MARGARET; JOHN, the ſon, dies, and ROGER dies, and THOMAS, lord de la Ware, his ſon by the firſt *venter*, died without iſſue, 5 HEN. VI. whereupon JOHN GRIFFIN was his heir, yet in regard the land was entailed upon WEST, WEST was ſummoned to parliament, 5 HEN. VI. as lord de la Ware.

That caſe of the lord Ogle, and this of the lord de la Ware, were cited in the great caſe of NEVILL and VANE, upon the debate concerning the barony of Abergavenny, and then it was alledged that CUTHBERT was made lord Ogle, and REGINALD WEST made lord de la Ware, only by reaſon the lands were entailed upon them; and upon the ſame reaſon NEVILL having the lands entailed upon him, which were the lord Abergavenny's, the dignity and title of lord Abergavenny was adjudged to him from the heir female.

To the queſtion for the title of RICHARD, earl of Kent.

We find that EDMUND, earl of Kent, grandfather of the ſaid RICHARD, and GEORGE, earl of Kent, father of the ſaid RICHARD, had the titles of lord Haſtings, Weyſford, and Ruthyn, and ſo likewiſe the ſucceeding earls; but what titles are upon the ſtall at Windſor, we cannot yet tell.

Touching the precedents.

We refer ourſelves to the book produced, which was exhibited in Bergavenny's caſe. *Vide* **page 83, &c.**

ROBERTUS,

ROBERTUS DE VIPOUNT, ultimus dominus de Weſtmerland, obiit H. III.

1 | ISABELLA, uxor ROGERI DE CLIFFORD, qui ROGERUS obiit 11 EDW. I.

2 | IDONEA, uxor ROGERI DE LEYBURNE, linea cujus IDONEÆ deficiente, tota ſua hæreditas, ad hæredes ISABELLÆ ſororis ſuæ devenerunt.

ROBERTUS DE CLIFFORD, obiit 8 E. II.

ROBERTUS DE CLIFFORD, obiit ſine prole.

ROGERUS DE CLIFFORD.

THOMAS DE CLIFFORD, obiit 15 RIC. II.

JOHANNES DE CLIFFORD.

THOMAS DE CLIFFORD, occiſus in prælio apud ſanctum Albanum.

JOHANNES DE CLIFFORD.

GILBERTUS DE ATTON, duxit MARGARETAM, filiam & hæredem WARINI DE VESCI, & ſum. fuit ad parliament. 1 & 16 E. III.

WILLIELMUS DE ATTON, ſummonit. ad parliament. 44 E. III.

EDWARDUS ST. JOHN.

ANASTASIA, filia & cohæres.

CATHARINA, uxor RADULPHI DE EVERS, mil.

ELIZ. uxor primò WILL. dom. PLAYZ, poſtea JOHAN. dom. Conyers.

Sum. ad parl. 28 EDW. I.

THO. DE BROMFLETE, armiger.

MARGARETA, unica filia & hæres.

HENRICUS BROMFLETE, miles, ſum. ad parl. 27 H. VI. per nomen HEN. BROMFLETE de Veſci, cum clauſula in brevi de ſummonitione ſcil. hæredibus maſculis.

JOHANNES DE CLIFFORD.

MARGARETA, unica filia & hæres.

HENRICUS DE CLIFFORD.

HENRICUS DE CLIFFORD, creatus comit. Cumbriæ, obiit 34 H. VIII.

HENRICUS, comes Cumbriæ, obiit 12 ELIZ.

GEORGIUS, comes Cumbriæ, obiit anno 1605, ſine prole maſculo.

FRANCISCUS, comes Cumbriæ.

RICHARDUS SACKVILE comes Dorſetiæ.

ANNA, ſolâ filia & hæres.

HENRICUS, ſummonitus ad parl. in baronem Clifford.

MARGARETA, uxor JOHANNIS, com. Thanet.

ISABELLA, uxor JACOBI, com. Northampton.

. . . . . uxor RICARDI, comitis de Corke.

WILLIELMUS, dominus Latimer. — ELIZABETHA, filia EDMUNDI, comitis Arundeliæ.

ELIZABETHA, filia unica & hæres, uxor secunda. — JOHANNES NEVILL, dominus de Raby. — MATILDA, soror HEN. PERCY, com. Northumbriæ, uxor prima.

THOMAS WILLOUGHBY, mil. filius ROBERTI WILLOUGHBY de Eresby. — ELIZABETHA, soror & hæres. — JOHANNES NEVILL, dominus Latimer, vendidit baroniam suam, fratri suo RADULFO, dom. de Raby, primo comiti Westmerlandiæ. — RADULPHUS NEVILL, dom. de Raby, primus comes Westmerlandiæ.

GEORGIUS NEVILL, baro Latimer. — ELIZ. filia & co-hæres RICARDI BEAUCHAMP, com. Warwici.

1 GEORGIUS, dominus Latimer, cæsus in prælio apud Edgcot.

2 HENRICUS NEVILL, miles.

RICARDUS, baro Latimer.

JOHANNES, dominus Latimer, obiit anno 1542.

JOHANNES, dominus Latimer.

1 CATHERINA, uxor HENRICI, com. Northumbr.

2 DOROTHEA, uxor THOMÆ CECILL, com. Exon.

3 LUCIA, uxor WILLIELM. CORNWALLIS.

4 ELIZABETHA, uxor JOHANNIS DANVERS, militis.

The

The deſcent of the lord GREY.

REGINALD DE GREY, lord of Wilton and Ruthyn. — coufin and heir of HUGH LONGCHAMP, lord of Wilton.

JOHN DE GREY, baron of Wilton and Ruthyn. — MAUD, daughter of RALPH, lord Baſſet of Drayton.

ROGER DE GREY, ſecond ſon of JOHN, baron of Ruthyn. — ELIZABETH, daughter to JOHN, lord Haſtings, coufin and heir to JOHN, lord Haſtings, earl of Pembroke.

HENRY DE GREY, baron of Wilton's eldeſt ſon.

REGINALD DE GREY, baron of Ruthyn. — ELEANOR, daughter of JOHN, lord Strange of Knockyn.

REGINALD DE GREY, lord Haſtings and Ruthyn. — MARY, daughter to WILLIAM, lord Roſs, firſt wife.

Sir JOHN GREY, knight of the Garter, died in the life time of his father. — CONSTANCE, daughter and coheir to JOHN HOLLAND, duke of Exeter.

EDMUND GREY, lord Haſtings, Weiſhford, and Ruthyn, created earl of Kent 5 EDW. IV. — CATHERINE, daughter to HENRY PERCY, earl of Northumberland.

ROBERT baron of Greyſtock. — ELIZABETH, wife of WILLIAM CALTHORPE.

ELIZABETH, wife to THOMAS, lord Dacres of Gilleſland.

ANNE, daughter of RICHARD WOODVILE, earl Rivers, firſt wife. — RICHARD, earl of Kent, lord Haſtings, Ruthyn, &c. died without iſſue.

GEORGE, GREY, earl of Kent, lord Haſtings, Weiſhford, and Ruthyn.

CATHERINE, daughter to WILLIAM HERBERT, earl of Pembroke, ſecond wife.

ANTHONY, GREY of Ruthyn, died before his father.

EDMUND, GREY, third ſon.

JOHN GREY, fourth ſon.

ANNE, wife to JOHN, lord GREY of Wilton.

Sir HENRY GREY of Wreſt, knt. (not uſing the title of earl, &c.) being notwithſtanding both earl and baron by deſcent. — ANNE, daughter of JOHN BLENERHASSET.

ANTHONY GREY of Branſpathe.

GEORGE GREY.

ANTHONY GREY, now earl of Kent.

HENRY GREY, the heir male of earl EDMUND.

HENRY GREY of Wreſt, eſq; died before his father. — MARGARET, daughter to ſir JOHN ST. JOHN, ſiſter to OLIVER, lord ST. JOHN.

1 REYNALD GREY, eldeſt ſon, earl of Kent, lord Haſtings, Weiſhford, and Ruthyn, &c. died ſine prole.

2 HENRY GREY, ſecond ſon, earl of Kent, lord Haſtings, Weiſhford, Ruthyn, &c. died ſans iſſue.

3 CHARLES GREY, third ſon, earl of Kent, lord Haſtings, Weiſhford, and Ruthyn. — SUSAN, daughter of RICHARD COTTON of Hampſhire, eſquire.

Sir HENRY GREY, earl of Kent, lord Haſtings, Weiſhford, and Ruthyn, died without iſſue 1639. — ELIZABETH, 2d daughter, and one of the three coheirs of GILBERT TALBOT, earl of Salop. — Sir MICHAEL LONGVILE. — SUSAN, daughter of CHARLES, earl of Kent.

CHARLES LONGVILE, heir general to EDMUND, firſt earl of Kent, to him and his heirs males of his body, and lord Haſtings, Weiſhford, and Ruthyn, to him and his heirs.

Die Sabbathi 2 Januarii, 1640.

It is this day ordered by the lords ſpiritual and temporal, in parliament aſſembled, That the lord GREY and CHARLES LONGVILE, eſq; ſhall by themſelves, and one counſel on either ſide, attend the lords of the grand committee for privileges, on Monday the fourth of this inſtant January, at two of the clock in the afternoon, in the parliament houſe, and to bring in the records, or authentick copies, which were inſiſted upon by both parties; that thereby their lordſhips might be fully ſatisfied in the cauſe.

Die Martis 5 Januarii, 1640.

A motion being made touching the baronies of Haſtings and Ruthyn; and the houſe being put into a committee during pleaſure, their lordſhips took into conſideration, Whether the judges opinion ſhall be heard publickly concerning the cauſe for the titles of the baronies of Haſtings and Ruthyn; and after debate the houſe was reſumed, and it was put to the queſtion, and reſolved by the major part, and ordered by the houſe, That the judges opinions be heard ſeverally, and publickly in this houſe, concerning the baronies of Haſtings and Ruthyn; and they ſhall have liberty to ſend for the precedents and records urged by the counſel, if they pleaſe.

It is alſo this day ordered by the lords ſpiritual and temporal in parliament aſſembled, That upon Friday next come ſevennight, Mr. attorney-general ſhall argue here in court publickly the King's claim to the titles of the baronies of Haſtings and Ruthyn, and the counſel of the lord GREY and CHARLES LONGVILE, eſq; to be preſent at the bar, and heard if they will ſpeak in the ſaid cauſe.

Die Veneris 15 Januarii, 1640.

Ordered by the lords ſpiritual and temporal in parliament aſſembled, That the attorney-general ſhall argue the King's claim (*ut ſupra*) on Monday next.

Die Martis 19 Januarii 1640.

Mr. attorney-general argued the King's claim, and prayed judgment for the King; whereupon, at the motion of the earl of Kent's and Mr. LONGVILE's counſel, it was ordered by the lords ſpiritual and temporal in parliament aſſembled, That they ſhould both be heard by counſel on Friday next, to Mr. attorney's new matter, and Mr. attorney to have the laſt word if he pleaſes.

Die Veneris 22 Januarii, 1640.

Ordered that Mr. LONGVILE's buſineſs be heard upon Monday next.

Die Lunæ 25 Januarii 1640.

Ordered by the lords ſpiritual and temporal in parliament aſſembled, That the cauſe now depending before their lordſhips, between CHARLES LONGVILE, eſq; and the lord GREY, ſhall be heard in open court at the bar on Thurſday the twenty eighth of this inſtant January, at nine of the clock in the morning, at which time the lords deſire the judges, or moſt part of them, to be preſent.

Die Jovis 28 Januarii, 1640.

Ordered that Mr. LONGVILE's buſineſs be heard to morrow.

Die Veneris 29 Januarii, 1640.

After this, Mr. HALES, of counſel with Mr. LONGVILE, replied to the argument of Mr. attorney-general, concerning the title to the baronies of Haſtings and Ruthyn, and concluded with a deſire that their lordſhips would give judgment for Mr. LONGVILE: Next Mr. WRIGHT did argue for the title of the earl of Kent to thoſe baronies (which being ended) it was ordered by the houſe, That the judges ſeverally do deliver their opinions therein, upon the *poſſeſſio fratris* upon Monday morning next, *viz. primo die Februarii.*

The lord chief juſtice BRAMPSTON his argument in the lord GREY of Ruthyn's caſe, about the *poſſeſſio fratris*, delivered before the lords 1640.

Whether a *poſſeſſio fratris* may be of a barony.

I THINK a barony is ſuch an hereditament, as the maxim of a *poſſeſſio fratris* doth not extend unto.

The maxim of *poſſeſſio fratris, facit ſororem eſſe hæredem de feodo ſimplici*, doth not extend to every hereditament, there are many hereditaments which are properly, and only determinable at the common law, that this maxim extends not unto.

It extends only to ſuch hereditaments, whereof a poſſeſſion may be gained; a poſſeſſion may be gained two ways, by entry, or by pernancy of profits.

Entry is *pedis poſſeſſio* into lands and meſſuages; pernancy of profits is by taking *eſplées*, that is, the commodity, or fruit, or profit, which that hereditament doth naturally yield, as of rents, the payment or pernancy of rents; of an advowſon, the preſentation; of an office, the fees or vales; of a common, the taking the graſs by the mouths of his beaſts; of a ſeignory, the rents and amerciaments; ſo that where a man in pleading doth alledge a ſeiſin, it is not enough to ſay, that the anceſtor was ſeiſed, but that he was ſeiſed, *capiendo inde explet. viz.* if it be of lands, the herbage, *&c.*

So that an hereditament whereunto there can be no entry, or which doth not naturally yield any *explées*, any fruit, or profit; of ſuch an hereditament the rule of *poſſeſſio fratris* cannot hold, becauſe the poſſeſſion cannot be gained of ſuch an hereditament, neither by entry, or pernancy of profit.

Beſides ſuch things whereof a poſſeſſion may be gained, the poſſeſſion doth make a title; but when poſſeſſion cannot gain a title, there poſſeſſion cannot give a title, and conſequently cannot make a daughter heir, for that is to entitle her, which otherwiſe is not heir, nor hath any title at all; ſo that if poſſeſſion cannot be gained to make a title, as it cannot of ſuch things, where there cannot be an entry, or pernancy of profits; there, of ſuch things, or hereditaments, there can be no *poſſeſſio fratris.*

There are many hereditaments triable at the common law, which this maxim of *poſſeſſio fratris* doth not extend unto as a right or title: If a man hath right to lands, and hath iſſue a ſon and a daughter by one *venter*, and a ſon by another, and dieth, and this right doth deſcend to the eldeſt ſon; although this eldeſt ſon doth bring his action, and die before entry, the right ſhall deſcend to the younger brother of the half blood. And ſo if a man die ſeiſed of lands, having a ſon and a daughter by one *venter*, and a ſon by another *venter*, and the eldeſt brother bringeth an aſſize of *mort d'auncеſter*, and doth loſe by falſe verdict, the daughter ſhall have the attaint, but when ſhe hath recovered, the brother of the half blood ſhall have the lands.

So

So if a man giveth lands to one, and his heirs, with warrantee, and the feoffee hath a ſon and a daughter by one *venter*, and a ſon by another, and dieth; and the eldeſt ſon doth enter, and die, the daughter ſhall inherit the land by the *poſſeſſio fratris*, but the warrantee ſhall deſcend to the brother of the half blood; for that is ſuch an hereditament, whereof there can be no more poſſeſſion acquired than what was given him at firſt by the deed; and this appeareth by our books.

So if a reverſion expectant upon a freehold, or eſtate tail without any rent reſerved; if he that hath ſuch a reverſion, or remainder, hath iſſue a ſon and a daughter by one *venter*, and a ſon by another, and dieth, and then the eldeſt dieth without iſſue, the ſon of the ſecond *venter* ſhall inherit, and not the daughter, and this is alſo common in our books.

Now a barony is an hereditament of this kind.

There can be no poſſeſſion gained of it; there can be no entry, it is not of that kind, it doth yield no *explées*, profit, or other fruit: It hath been ſaid that the ſitting in parliament may be as an actual poſſeſſion; there is incident to this great dignity, an office, or ſervice, of great truſt and honour, as juriſdiction, and vote, and voice in parliament; the ſitting there is but an exerciſe and performance of the ſervice; and not any profit of the honour.

Admit a baronet might be granted to one and his heirs, can there be any *poſſeſſio fratris* of that, or can he have any more, or other poſſeſſion than he had by the firſt gift or creation? There is no office, or hereditament at all incident to that.

Another reaſon why there can be no *poſſeſſio fratris* of a barony is;

The title to every barony muſt be by record; baron or no baron muſt be tried by record; ſo that whoſoever ſhall make a title to a barony muſt reſort to the record, and begin his title there, and ſo conſequently muſt make himſelf heir to the perſon firſt ennobled by that record; which the daughter cannot do, notwithſtanding the poſſeſſion of the brother; for ſhe is not heir to the firſt anceſtor, but the brother of the half blood.

For theſe reaſons I think there can be no *poſſeſſio fratris* of a barony.

This argument was given me by his ſon.

Die Lunæ 1 *Februarii*, 1640.

The judges this day delivered their opinions in the caſe of the lord GREY and CHARLES LONGVILE, eſq; concerning the titles of the baronies of Haſtings and Ruthyn, whether a *poſſeſſio fratris* can be upon a barony by writ; and it was the unanimous opinion of the judges, that there cannot be a *poſſeſſio fratris* in point of honour. And upon ſomewhat which was ſpoken of in the argument, concerning a power of conveying away of honour; it was reſolved upon the queſtion, *nemine contradicente*, That no perſon that hath any honour in him, and a peer of this realm, may alien, or transfer, the honour to any other perſon.

Reſolved upon the queſtion, *nemine contradicente*, That no peer of this realm can drown, or extinguiſh his honour (but that it deſcends unto his deſcendants) neither by ſurrender, grant, fine, nor any other conveyance to the King.

Ordered, That the judgment in Mr. LONGVILE's caſe, concerning his title to the baronies of Haſtings and Ruthyn, be deferred until Wedneſday morning next.

Die Jovis 4 *Februarii*, 1640.

The houſe proceeded to conſider of Mr. LONGVILE's petition, which being read, their lordſhips did conceive it to be defective; therefore it was ordered he ſhould have leave to mend his ſaid petition, by inſerting the title of lord Grey, and preſent it again to this houſe to morrow morning.

Die

Die Veneris 5 *February*, 1640.

Mr. LONGVILE's petition being mended, was read, touching his title to the lord Grey, and after ſome debate, it was reſolved upon the queſtion, by the major part, That CHARLES LONGVILE, eſq; ſhall be admitted to the title and dignity* of lord de Grey.

The lord chamberlain, earl of Bath, earl of Hertford, and earl of Briſtol, were appointed by the houſe to acquaint his Majeſty with what reſolution the houſe had made concerning Mr. LONGVILE.

Jo. BROWNE, *Cleric' Parliamentorum.*

Die Mercurii 10 *Februarii*, 1640.

This day CHARLES, lord de Grey†, was introduced in his robes, and his writ of ſummons dated 6 Febr. 16 CAR. Regis, being delivered to the lord keeper upon the knee, was given to the clerk, and read publickly, and afterwards he was brought between the lord PAGET and the lord GREY de Werk, and placed by the lord great chamberlain, and the earl marſhal, and the king of arms, next below the lord DACRES, with a *ſalvo jure*. DUGDALE's baron. vol. I. p. 718, 719.

Jo. BROWNE, *Cleric' Parliamentorum.*

Carta de annis quinto, ſexto, & ſeptimo EDW. IV. N° 18.

REX archiepiſcopis, &c. ſalutem. Nos intimè conſiderantes probitatem ſtrenuam, & providentiam circumſpectam, ac geminatam morum, & generis claritatem, chariſſimi conſanguinei noſtri, EDMUNDI, baronis & domini de Haſtings, Waisford, & de Ruthyn, ipſum conſanguineum noſtrum, comitem Kanc', cum titulo, loco, & ſede, nomine, authoritate, & honore eidem debit. perficimus, erigimus, ordinamus, & creamus, ac per cincturam gladii realiter inveſtimus: Habend' & tenend' eadem titulum, ſtilum, locum, ſedem, authoritatem, nomen & honorem comitis Kanc' ſibi & hæredibus ſuis maſculis, de corpore ſuo legitime procreatis imperpetuum. Et ut ipſe comes Kanc', & hæredes ſui hujuſmodi juxta tanti nominis & honoris excellentiam decentius & honorificentius valeant incumbentia ſibi onera ſupportare dedimus & conceſſimus, & hac charta noſtra confirmavimus, eidem comiti Kanc', & hæredibus ſuis prædictis viginti libras, redditus ſingulis annis percipiend' de exitibus & proficuis com' Kanc', per manus vic. ejuſdem com' pro tempore exiſten' ad terminos ſancti MICHAELIS, & paſchæ per equales portiones imperpetuum. Quare volumus & firmiter præcipimus pro nobis & hæredibus noſtris, quod prædictus comes Kanc' titulum, ſtilum, locum, ſedem, nomen, auctoritatem, & honorem hujuſmodi habeat & teneat ſibi, & hæredibus ſuis prædictis, ac feodum prædictum, ex hac cauſa percipiat in De perfectione com. Kanc.

* Judge CROKE, in the third report, p. 601. reports the caſe thus.

The lord GREY's caſe.

Memorandum, That in this parliament a queſtion was moved concerning the barony of Ruthyn, where the caſe was, That one being created a baron, to him, and his heirs, hath iſſue a ſon and a daughter by one *venter*, and a ſecond ſon by another *venter*, and the eldeſt ſon hath the barony, and ſits in parliament, and afterwards dies without iſſue, whether the ſecond ſon ſhall have that dignity as heir to his father, or the ſiſter ſhall have it as *poſſeſſio fratris* in lands, &c. and deſired to have the opinion of the judges therein? And all the juſtices reſolved, That there is not any *poſſeſſio fratris* of a dignity; but it ſhall deſcend to the ſon; for the younger ſon is *hæres natus*, and the ſiſter is only *hæres facta*, by the poſſeſſion of her brother, of ſuch things as are in demeſn, but not of dignities and ſuch like, whereof there cannot be an acquiſition of the poſſeſſion, according to Co. LITT. 15. b. and Co. rep. lib. 3. fol. 42. RATCLIFF's caſe.

† Which CHARLES lord Grey, died at Oxford 1643. leaving iſſue one ſole daughter and heir, SUSAN, to whom the dignity and title of baroneſs Grey then deſcended; which SUSAN married ſir HENRY YELVERTON, of Eaſton-Manduit, in the county of Northampton, and that title is now in the right honourable the earl of Suſſex.

forma ſupradicta. His teſtibus, venerabilibus patribus, THO. archiepiſcopo Cantuar' totius Angl. primate; E. Exon Cancellario noſtro Angl. epiſcopo; conſanguineis noſtris chariſſimis, GEORGIO CLARENCIÆ fratre noſtro præchariſſimo, & JOHANNE, Norf. mareſchallo noſtro Angl. conſanguineo noſtro, ducibus; RICHARDO Arundeliæ, & JOHANNE Wigorn' conſtabular' noſtro, comitibus; nec non dilectis & fidelibus noſtris, WILLIELMO HASTINGS, camerario noſtro, & WALTERO BLOUNT, theſaur' noſtro Angl. militibus; ac dilecto & fideli noſtro ROBERTO STILLINGTON, cuſtode privati ſigilli noſtri clerico. Dat. per manum noſtram apud Weſtmonaſterium xxx die Mali, per breve de privato ſigillo, & de dat. &c. Convenit cum recordo,

WILLIELMUS COLET, deputat'.
JOHANNES BOROUGH, miles.

Carta de anno decimo EDW. I. N° 4.

Pro Reginaldo de Grey.

REX archiepiſcopis, &c. ſalutem. Sciatis nos dediſſe, conceſſiſſe, & hac carta noſtra confirmaſſe dilecto & fideli noſtro REGINALDO DE GREY, caſtrum de Ruthyn, & cantredum de Deffrencloyt, & terras quæ fuerunt Wenthlianæ de Laſty in eodem cantredo; & etiam terras quæ fuerunt ejuſdem Wenthlianæ, in cantredo de Engelfeld, cum omnibus ad prædicta caſtrum & cantredum de Deffrencloyt, & terras illas pertinentibus; habenda & tenenda de nobis & hæredibus noſtris, eidem REGINALDO, & hæredibus ſuis imperpetuum, prædicta caſtrum & cantredum de Deffrencloyt, & terras prædictas, adeo libere & integre, ſicut alia cantreda vicina tenentur, una cum forisfacturis hominum de eodem cantredo de Deffrencloyt, & terris illis; quæ quidem forisfacturæ ad nos pertinere poterant, vel debebant, & cum omnibus aliis ad ea pertinentibus, faciendo inde nobis & hæredibus noſtris, ſervicium trium feodor' militis pro omni ſervicio, conſuetudine, & demanda. Quare volumus & firmiter præcipimus, pro nobis & hæredibus noſtris, quod prædictus REGINALDUS, & hæredes ſui imperpetuum habeant, & teneant prædicta caſtrum & cantredum de Deffrencloyt, & terras prædictas adeo libere & integre, ſicut alia cantreda vicina tenentur, una cum forisfacturis hominum de eodem cantredo de Deffrencloyt, & terris illis; quæ quidem forisfacturæ ad nos pertinere poterant vel debebant, & cum omnibus aliis ad ea pertinentibus, faciendo, &c. ſicut prædictum eſt. Hiis teſtibus, EDMUNDO, fratre noſtro, ROGERO LE BYGOD, comite Norf. & mariſchallo Angl. HENRICO DE LACY, comit. Lincoln. WILLIELMO DE BELLOCAMPO, comit. Warr', OTTONE DE GRANDISONO, GALFREDO DE GYNEVILL, RICHARDO DE BRUS, HUG. fil. OTTONIS, ROBERTO fil. JOHANNIS, & aliis. Dat. per manum noſtram apud Dyneby, xxiii die Octobr. Et memorandum quod iſta carta irrotulata eſt in rotulo Wall. de hoc anno.

Convenit cum recordo.

REGINALD GREY de Ruthyn, ſummonitus ad parliamentum, 15 RICH. II.

Ex rot' ſervic' die coronationis de anno regni regis HENRICI IV. primo m. 2.

Pro REGINALDO DE GREY de Ruthyn, milite.

Item dictus REGINALDUS DE GREY exhibuit curiæ quandam petitionem in hæc verba. A treſhonure ſeigneur le ſeneſchal d'Engleterre; ſupplie REGINALD DE GREY de Ruthyn, chivaler, que plaiſe a votre hauteſſe de luy receivre al office de porter les grands eſperons, devant notre ſeigneur le Roy ore a ſon coronement, en maniere comme le dit JOHAN DE HASTINGS nadgairs conte de Pembrooke, & ſes aunceſtres, a qui heir le dit ſuppliant eſt de tout temps ont fait. Et lecta & intellecta petitione prædicta, pro eo quod prædictus REGINALDUS exhibuit curiæ, plura recorda & evidentias quod anteceſſores ſui hujuſmodi ſervi-

tium fecerunt, & quod idem facere ſibi competit jure hæreditario & facta proclamatione, &c. nullus hujuſmodi clameo contradixit; conſiderat' fuit quod prædictus REGINALDUS prædictum ſervicium faceret, & ſic ſervitium illud decenter implevit die coronationis ſupradictæ. Convenit cum recordo

LAUR. HALSTED, deput'.
ALGERN. MAY, mil.

A les tres honorables, &c.

Monſtre a vos ſeigneuries, ANTHONIE, comte de Kent, & ſeigneur Grey de Ruthyn, que RENAUD, ſeigneur Grey de Ruthyn, par droit de inheritance, come heir JEAN HASTINGS, comte de Pembrooke, al coronation du roy HENRI IV. porta les grands eſperons devant le dit Roy: Ore ſupplie votre dit ſuppliant qui eſt heir lineal al RENAUD, ſeigneur Grey de Ruthyn avant dit, comme par droit de inheritance, d'eſtre receeu a performer le dit ſervice, de porter les grands eſperons devant notre tres redoute ſoverain ſeigneur le Roy JAQUES II. al jour de ſon coronation.

Supplie HENRI, ſeigneur de Grey, que plaiſe a votre ſeigniories de lui receiver a ſon office, de porter les grands eſperons d'orrez devant notre ſeigneur le Roy JAQUES II. a ſon coronement, en maniere comme JEAN DE HASTINGS nadgairs conte de Pembrooke, & ſes aunceſtres des touts temps, ont fait; & comme REGINALD, ſeigneur de Grey de Ruthyn, heir lineal a dit JEAN, porta les dits eſperons al coronation le roy HENRI IV; & a queux JEAN & REGINALD, le ſuppliant eſt heir lineal.

COOK's LITTLET. fol. 20. It's held one may grant to another and his heirs, to be the maſter of his horſe, *&c.* which is a perſonal inheritance in groſs; and ſo to be his carver, 1 E. IV. 84. By the ſame reaſon may the office of carrying the ſpurs before the King at his coronation, which is a meer perſonal ſervice, and in groſs, be granted in fee; and by the record of the lord GREY's claim, it appears this office was held in groſs by him and his anceſtors, and then the ſame cannot be entailed, therefore it ſhall be ſuppoſed (unleſs it can be made appear, that it had been ſettled otherwiſe, as a fee conditional at common law) that this office remains to the heir general of the lord HASTINGS, whoſe heir general is the preſent lord GREY, and not the earl of Kent; and it is held that ſuch offices cannot be granted over, and then it cannot be diverted from the general heir; for which ſee 21 E. IV. 84. before cited. See DODDRIDGE's argument, *ante* page 188. 189. *&c.*

I do not think this office is loſt by any of the GREYS omitting to claim or to execute it, it being no office of truſt, but an office of honour conferred upon the perſon out of favour to him; but if it were loſt by this omiſſion, yet being granted to nobody elſe, my lord Grey ſtands faireſt to have it regranted to him, eſpecially the omiſſions being made by the perſons, who ought to have executed this office, during their minorities; as for inſtance, at the coronation of the late King CHARLES II. the preſent lord Grey's mother was a minor, or a *femme covert*.

3 Apr. 1685. J. EWER.

Preſent

Preſent April 14. 1685.

Lord keeper.	Lord treaſurer.
Lord privy-ſeal.	Lord privy-ſeal.
Duke of Norfolk.	Duke of Ormond.
Duke of Beaufort.	Earl of Huntingdon.
Earl of Bridgwater.	Earl of Peterborough.
Earl of Cheſterfield.	Earl of Sunderland.
Earl of Craven.	Earl of Ailesbury.
Earl of Radnor.	Lord Godolphin.

Lord chief juſtice JONES.

The claim of HENRY, lord de Grey de Ruthyn, for carrying of the great gilt ſpurs before the King at his coronation was allowed.

EDVARDUS CHUTE, regiſtr' cur'.

Die Lunæ 16 *Novembr.* 1685.

Upon calling over the houſe this day it was obſerved, that the herald hath entered among the barons lord Grey of Ruthyn, and the earl of Kent taking exceptions thereto, it was ordered by the lords ſpiritual and temporal in parliament aſſembled, That it be, and is hereby referred to the lords committees for privileges to conſider thereof, and of what proceedings hath been formerly in this caſe, and report their opinion to this houſe.

Die Martis 17 *Novembr.* 1685.

The lord privy-ſeal reported that the lords committees for privileges, to whom was referred to conſider of what proceedings have been formerly in the houſe concerning the title of lord GREY of Ruthyn, have peruſed the proceedings in 1640. concerning the ſaid title, and have ordered him to report, That it is the opinion of the committee, that the lord de Grey is rightly ſummoned to parliament, as lineally deſcended from REGINALD, lord de Grey, who was ſummoned in EDWARD III.'s time, by the title of lord de Grey of Ruthyn.

The queſtion being put, Whether to agree to the opinion of the committee,
It was reſolved in the affirmative.

Jo. BROWNE, cler' parliamentorum.

The

The Barony of *ROOS.*

The caſe of the duke of Buckingham, to the barony of Roos, as it was argued before the lords, Monday, January 1666.

GEORGE, duke of Buckingham, Plaintiff. E Coll. Greg. King. Lanc. Herald.

JOHN, earl of Rutland, Defendant.

December 12. 1666.

THE Houſe being made acquainted, That the duke of Bucks upon petition hath obtained his Majeſty's reference to this houſe concerning the claim to the title of lord Roos, the ſaid petition and reference was read as followeth.

To the King's moſt excellent Majeſty.

The humble petition of GEORGE, duke of Bucks, baron Roſs of Roſſe, Hamlake, Trusbut, and Belvoir, *&c.*

Sheweth,

THAT JOHN MANNERS, eldeſt ſon of the earl of Rutland, makes a pretence to, and calls himſelf by the name of the lord Roſſe; although the ſame title, with all other titles belonging to the barony of Roſſe, do ſolely belong to your petitioner, wherefore to remedy the preſent, and prevent future miſtakes of this kind,

Your petitioner humbly prays your Majeſty will be graciouſly pleaſed to refer the conſideration and determination thereof to the houſe of peers.

And your petitioner ſhall ever pray.

Buckingham.

At the court at Whitehall, December 10. 1666.

His Majeſty is graciouſly pleaſed to refer the conſideration of this petition, and the determination of the controverſy therein expreſſed, to the right honourable the houſe of peers, who are to do in it as their lordſhips ſhall find juſt and fit.

Arlington.

Upon this the lords made the following order.

Upon reading the humble petition of GEORGE, duke of Bucks, preſented to the King's Majeſty, ſhewing, That JOHN MANNERS, eldeſt ſon of the earl of Rutland, makes a pretence to, and calls himſelf by the name of lord Roſs, which title the duke of Bucks lays claim to, as ſolely belonging to him, and his Majeſty's reference made thereupon to this houſe, for the determination of the controverſy therein expreſſed; it is thereupon ordered by the lords ſpiritual and temporal in parliament aſſembled, That on Monday the 21ſt of January

 next,

next, this houſe will hear counſel on both parts at the bar, concerning the ſame, and the earl of Rutland is to have timely notice thereof.

January 21.

This day being appointed to hear counſel of the duke of Bucks concerning his claim to the title of lord Roſs, counſel being at the bar, the petition of the duke of Bucks was read, to which theſe exceptions were taken by the counſel of the earl of Rutland,

1. That the ſaid petition is not againſt the earl, but againſt his ſon, who is not a party, nor ſummoned to appear.

2. That the duke of Bucks doth not in his petition ſet out by any matter, how he derives his title of lord Roſs, ſo as no certain anſwer can be made thereunto.

The houſe upon ſerious debate of this buſineſs, and the queſtion being put, Whether to proceed further upon this petition of the duke of Bucks?

It was reſolved in the affirmative.

Upon this the counſel were called in, and told by the ſpeaker, that this houſe will proceed upon this buſineſs to morrow morning at 10 o'clock.

January 22. 1666.

This day counſel appearing at the bar for the opening of the title of lord Roſs, claimed by the duke of Bucks againſt the earl of Rutland; and the houſe being moved by the counſel for the ſaid earl of Rutland, that ſome farther time might be given for producing records, and better preparing for hearing a buſineſs of this concernment: Upon conſideration had thereof, it was ordered by the lords ſpiritual and temporal in parliament aſſembled, That the ſaid cauſe ſhall be heard at the bar of the houſe on Thurſday the 31ſt of January inſtant, if the ſeſſion laſted ſo long, if not, upon the firſt Thurſday after the beginning of the next ſeſſion of parliament.

The duke's title.

See the writ of parliament 49 H. III. exam. cum recordo per WILL. ROLL.

ROBERT DE ROOS, the duke's anceſtor, was ſeized in fee of the dignity of lord Roos, and had iſſue.

Sir EDWARD Roos, who married ROSA, daughter and heir of GEFFREY TRUSBUT, and ſo came in the title of Trusbut.

ROBERT DE ROOS,

See the writ examined, as above.

WILLIAM DE ROOS, ſummoned to parliament by writ, 1 EDW. II.

ROBERT DE ROSS, married ISABEL, daughter and heir of . . . . . d'Albany and Belvoir, and there came in the title of Belvoir.

Whereupon the ſaid dignities and titles, by ſeveral meſne deſcents, came to *EDWARD Ross, who died *tempore* HEN. VII. without iſſue, leaving ELEANOR, his ſiſter and heir.

* EDWARD was reſtored by act of parliament, 1 HEN. VII. after the attainder of THOMAS, lord ROOS, who was attainted *tempore* EDW. IV.

ELEANOR married—Sir ROBERT MANNERS, knt. and had iſſue

GEORGE MANNERS.

THOMAS, lord Roos, created earl of Rutland, from whom the pedigree ſtands thus,

1 HENRY, the eldeſt.		2 Sir JOHN MANNERS, knt.
1 EDWARD.	2 * JOHN.	GEORGE.
ELIZABETH, who married ſir WILLIAM CECIL, lord Burleigh.	FRANCIS.	Eight other brothers who died without iſſue male.
WILLIAM CECIL, lord Roos, who died ſans iſſue.	CATHERINE, who married GEORGE, duke of Buckingham.	JOHN, now earl of Rutland.
	GEORGE, the now duke.	

Memorandum, That by certain books of arms and papers, in the hand of WILLIAM RILEY, herald at arms, the titles of Trusbut and Belvoir are ſaid to be united to ROBERT Roos of Hamlake by the marriage of ISABEL, only daughter and heir of WILLIAM, lord d'Albany, who had it as heir to AGATHA, baroneſs of Trusbut, who married WILLIAM D'AUBIGNY, the father, which ſaid AGATHA was ſole daughter and heir of ſir GEFFREY TRUSBUT, baron of Trusbut.

But there are no records to be found either in the tower, chapel of the rolls, nor with the clerk of the lords houſe, to prove that Trusbut and Belvoir are baronies, nor any ſummons of parliament, whereby any of the family of Roos, or MANNERS, have been ſummoned with theſe additions. No proof of the titles of Trusbut, &c. to have been baronies.

But by the inquiſition, taken *poſt mortem* earl FRANCIS, he is ſtiled earl of Rutland, lord Roos of Hamlake, Trusbut, and Belvoir, and therefore if theſe titles were not incorporated with the earldom, and made deſcendable to the heirs male, they belong to the duke, as heir general to all. See the copy of part of the inquiſition examined by WILLIAM ROLL.

Proofs that dignities conferred by the King's writ of ſummons are deſcendable to females: The caſe of MARGARET, wife to SAMPSON LENNARD, and the caſe of REGINALD, lord Grey de Ruthyn, *&c.*

That by law thoſe dignities ought to deſcend to heirs female, where there is a ſole heir, and not coheir, and that alienation of poſſeſſions cannot alter the law.

Other dignities of honour, not otherwiſe reſtrained by the Princes letters patents, are deſcendable to females, as well as males.

* Touching the ſeveral deſcents and marriages, ſee the heralds books, wherein the ſame is ſet down at large, until the time of JOHN, father of FRANCIS, the duke's grandfather, 8 fol. 55. which book is in the cuſtody of FRANCIS SANDFORD, one of the purſuivants of arms.

If this were in queſtion, it would draw into doubt, Whether the ſovereign dignity ought to deſcend to heir female; and therefore if the greater honour may ſo deſcend, why not the leſſer?

Again, Females might have been tenants *in capite*, or knight's ſervice; likewiſe they might have had husbands to do that ſervice; and therefore why not enjoy honours when they may have husbands to perform the offices incident to them.

The King, by letters patents, may create a baroneſs, why may it not deſcend?

Obj. 1. As to the earl's objections, 'tis likely he will rely much upon the earl FRANCIS his caſe againſt the ſaid WILLIAM CECIL.

See the petition to king JAMES of earl FRANCIS, his caſe and title, ante p. 162. Upon which petition king JAMES, the fourteenth of his reign, made an award by letters patents, expreſſing, becauſe the lands and baronies of Hamlake are conveyed to the ſaid earl FRANCIS, and the principal ſeat, and moſt eminent ſeat of Roos is deſcended to WILLIAM CECIL, as heir general, and being willing to reconcile the difference between ſuch perſons of quality, did accept and declare the ſaid WILLIAM CECIL to be lord Roos, and to have place in parliament accordingly, and that the ſaid earl FRANCIS ſhould be accepted and called lord Roos of Hamlake, and his ſon and heir ſhould enjoy the name and dignity of lord Roos of Hamlake, Trusbut, and Belvoir, in parliament.

Lord Roos of Hamlake.

But now the duke claims under and is heir, as well to the ſaid FRANCIS, as to the ſaid WILLIAM CECIL, ſo this order ſignifies nothing to the now earl.

Note, The King grounds his order upon this, that earl FRANCIS had then Hamlake in poſſeſſion, which Hamlake the duke now hath, ſo alſo the duke hath Trusbut, but the preſent earl hath Belvoir.

Obj. 2. Perhaps he may vouch alſo the caſe of CHARLES LONGVILE, eſq; before the lords 1640. who claimed the honours of lord Haſtings and Ruthyn, as heir general to REGINALD GREY.

Feb. 5. 1640. Upon which petition the lords reſolved, the ſaid Charles ſhould be admitted to the title and dignity of lord de Grey.

Obj. 3. That the fee of the barony is changed into an eſtate tail by the grant and acceptance of an earldom.

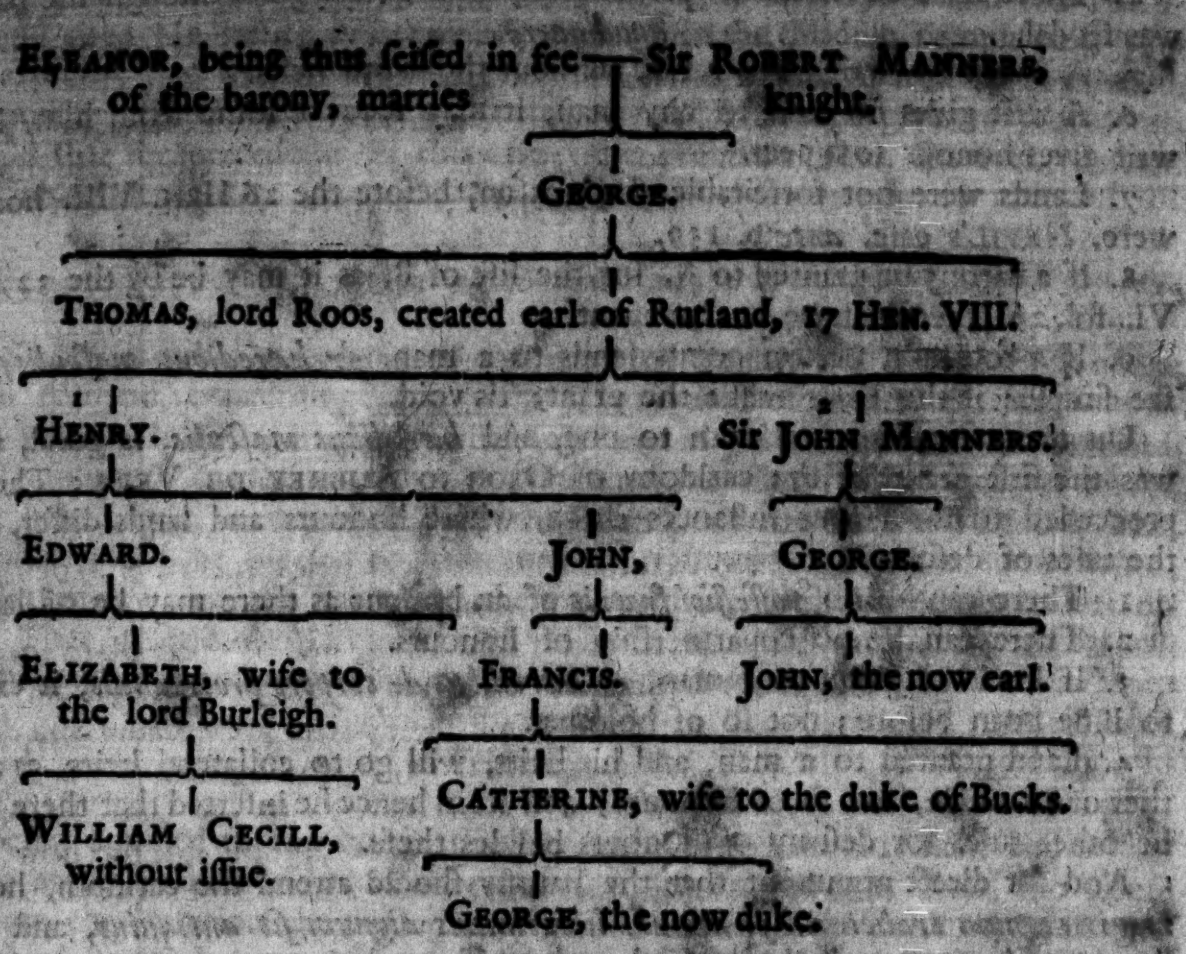
To this 'tis anſwered by a reſolve of the houſe of lords 1640, in the caſe of CHARLES, lord Grey, that no dignity of honour can be tranſported, conveyed, or ſurrendered by the party.

Sir HENEAGE FINCH, his Majeſty's ſollicitor argued for the duke.

ROBERT DE ROOS, called to parliament *per breve* 49 HEN. III. *c'eſt*, barony deſcends, *per* ſeveral meſne deſcents, to EDMOND ROOS, *qui tempore* HEN. VII. died without iſſue, leaving ELEANOR, his ſiſter and heir, and ſummoned by the name of Hamlake, Trusbut, and Belvoir, which two laſt titles were additions given to the barony of Roos, by occaſion of ſeveral marriages with the daughters and heirs of Trusbut, and Belvoir, but the barony of Roos was but one.

Additions.

ELEANOR,



Upon a petition exhibited by the duke to his Majeſty, claiming the barony of Roos, the title was referred to the houſe of peers, then ſitting, January, February 1666.

I ſhewed, for the duke, that the title was clear as heir general, that he ought by the rules of law to inherit a barony, it being an hereditament deſcended upon him, as lineal heir to him laſt ſeiſed, and that it could be no objection to the duke, that he claimed under an heir general, for the barony itſelf came by an heir general into the family of MANNERS, and by an heir female went out of that family into the family of CECILS, and by the death of WILLIAM CECIL, went out of that family, to Rutland again, and deſcended upon earl FRANCIS, from whom, by the like reaſon, it ought of right to deſcend upon CATHERINE, the mother of the preſent duke.

Mr. MOUNTAGU, the Queen's attorney, made an elaborate argument to the contrary. He ſaid the rules of deſcent varied in caſes of honour: For a baron in fee-ſimple being made an earl, to him, and the heirs males of his body, the earldom in tail ſhould attract to itſelf the barony in fee, and they could not be ſevered; not that the barony is merged in the earldom, but rather ſuſpended, as he ſhewed by theſe inſtances.

1. When an earl is called to parliament, his barony is not mentioned in the writ of ſummons.

2. He hath but one voice.

3. He ſhall retain but five chaplains, ACTON's caſe. COKE's 4th rep. p. 117.

4. He ſhall only pay an earl's relief.

And for a further inducement to ſhew the likelihood, that honours might vary from lands, in the rules of deſcent, he ſhewed nine ſeveral points, wherein honours and lands differ in the rule.

1. Honours may not be aſſigned, lands may.

2. No fine or recovery will, or doth bar the intail of an honour.

3. An honour given to one, and the heirs males of his body, before the ſtatute of W. II. could not have been aliened *poſt prolem ſuſcitatam*.

4. There ſhall be no tenant *per* courteſy of a barony, no, though the barony was feodal. *quod quere.*

5. A baron by writ gains a fee, without the word heirs.

6. A writ gives no land to any man, it may recover ſome from him, but a writ gives honour to a peer.

7. Lands were not forfeitable for treaſon, before the 26 HEN. VIII. honours were, NEVIL's caſe. *ante* p. 139.

8. If a barony be granted to A, for the life of B, as it may be by the 32 HEN. VI. fol. 29. there can be no occupant.

9. If a common perſon grants lands to a man, *& hæredibus maſculis*, 'tis a fee ſimple; if the King make the grant, 'tis void.

But the grant of an earldom to one, and *hæredibus maſculis*, is good, for ſo was the firſt grant of the earldom of Oxon to AUBREY DE VERE: Then he proceeded to ſhew four inſtances more, where honours and lands differ, as to the rules of deſcent.

Ante p. 257. 1. There can be no *poſſeſſio fratris* of an honour as there may be of land.

2. There can be no copartnerſhip of honours.

3. If lands be given to a man, *& hæredibus de corpore procreandis*, it extends to iſſue born before; not ſo of honours.

4. Land granted to a man, and his heirs, will go to collateral heirs, as a brother or an uncle, not ſo of honours; and from hence he inferred that there might be other rules for deſcent of honours beſides theſe.

And for direct argument that the barony ſhould attend the earldom, he ſaid, *magis dignum trahet ad ſe minus, licet minus dignum ſit antiquius*, and urged five inconveniences, if the law was otherwiſe.

1. An ancient earldom ſhould loſe the plumes of their honour.

2. The earldom doth uſually carry away the greateſt part of the eſtate; ſo that if the barony ſhould deſcend to the heir general, it would be poor, and that might cauſe degradation.

3. When the King makes a baron an earl, he did not intend to multiply peers.

4. This would be a wrong to earls eldeſt ſons, who are entitled by courteſy to their father's baronies.

5. After a conſtant uſage to the contrary, it would be very inconvenient now to reduce the queſtion, and ſo concluded with precedents which were in number twelve, whereof ſix were caſes of thoſe who had earldoms in tail, and baronies in fee, died without iſſue male, leaving ſeveral coheirs, and yet the barony went along with the earldom to the heir male; the precedents of this kind were, 1. MICHAEL DE LA POLE, earl of Suffolk in tail, and baron Pool in fee, and died without iſſue male, anno 3 HEN. V. 2. FITZ-ALAN, earl of Arundel, who was baron of Clun, who died anno 4 HEN. V. 3. JOHN DE VERE, the fourteenth earl of Oxford, baron of Bulbeck and Badleſmere, who died anno 1526. 4. FERDINANDO, earl of Derby. 5. THOMAS PERCY, earl of Northumberland, who died 1572. 6. The earl of Shrewsbury.

The ſix other precedents were caſes, where ſuch earls have died without iſſue male, leaving one only daughter, or ſiſter and heir; the precedents were, 1. HUMPHREY FITZ-ALAN, earl of Arundel, *cujus* ſole heir *& fil.* married JAMES BOTELER, earl of Ormond and Wiltſhire, anno 16 HEN. VI. 2. FITZ-GERALD, earl of Kildare in Ireland in tail, and baron Offaly in fee; his daughter and heir married DIGBY, ſued for the barony, and king JAMES ſent her a command to deſiſt from a ſuit againſt law, and created her a baroneſs. 3. GEORGE, earl of Cumberland, and lord Clifford *mort*, *ayt* iſſue ANNE, now counteſs of Pembroke; FRANCIS enjoyed the earldom and barony. 4. ROBERT, earl of Suſſex, lord Fitz-Walter, one married to the earl of Holderneſs, who died *ſans* iſſue; another married to MILDMAY, yet the barony went to RATCLIFF, heir male of the earldom. 5. HENRY, the eighteenth earl of Oxford. 6. The earl of Kent's caſe, and the barony of Ruthyn, ruled upon the *poſſeſſio fratris*, the concomitancy of the earldom not then queſtioned. And laſtly he mentioned the award

of king JAMES, anno 14. in the caſe between WILLIAM CECIL and earl FRANCIS, and cited Mr. juſtice WHITLOCK's reading, in the Middle Temple-hall, who held expreſly, that the barony ought to attend the earldom, and ſo concluded, with putting ſeveral caſes to ſhew the reſpect which the law gives to precedents, and ſaid that the precedents in this caſe were pregnant ones, for every deſcent was a new precedent.

Jovis 31 *Januarii.*

The houſe heard the counſel of the duke of Bucks, and the counſel of the earl of Rutland, concerning their claim to the title of lord Roſs: Mr. MOUNTAGU made a long argument to maintain the claim of the earl of Rutland, and Mr. ſollicitor made an anſwer in behalf of the claim of the duke of Bucks, which being done, it was moved by the counſel of the earl of Rutland, That the houſe would be pleaſed to hear another argument by ſerjeant MAYNARD, in point of law, on the behalf of the earl of Rutland: whereupon it was ordered, That if ſerjeant MAYNARD be ready to morrow at nine of the clock, the houſe will hear him, if not, to go on in the buſineſs.

February 1.

It being ſignified to the houſe, that ſerjeant MAYNARD was ſick, and ſo not able to argue the caſe in law concerning the title of the lord Roſs, the houſe took into conſideration the matter in difference between the duke of Bucks and the earl of Rutland, concerning the claim to the title of lord Roſs, and after a long and ſerious debate their lordſhips agreed to make a repreſentation to the King.

That upon the difference between the duke of Bucks and the earl of Rutland, concerning the barony of Roſs, in purſuance of his Majeſty's reference, and a deciſion of his late Majeſty king JAMES being produced concerning the ſame title, in the caſe of the lord CECIL: And the duke of Bucks, out of expreſſion of kindneſs to the houſe of Rutland, from whence he is deſcended, propoſing that it might be offered to his Majeſty's wiſdom, whether this controverſy may not be alſo compoſed in the like manner: The lords thereupon thought fit to offer the ſaid propoſal to his Majeſty.

Whereupon the duke of Buckingham had the title of lord Roſs: But by the death of the ſaid duke without iſſue, the title returned to the houſe of Rutland, who now enjoys the ſame.

The

The Barony of *FITZWALTER.*

Lunæ 20 *Aug.* 1660.

E Coll. Greg. King Lanc. Herald.

UPON reading the petition of ROBERT CHEEK, eſq; together with a reference from his Majeſty concerning his claim to the title of the barony of Fitzwalter; it is ordered that Mr. MILDMAY ſhall have a copy of this petition, and the cauſe to be heard at this bar by counſel, on both ſides this day ſen'night in the morning.

Upon the petition of ROBERT CHEEK, eſq; directed to the King, touching the barony of Fitzwalter, and a reference from his Majeſty to the lords in parliament, to hear the parties concerned, and to certify his Majeſty what their lordſhips conceive juſt therein, that his Majeſty may declare his further pleaſure, as alſo upon the petition of the ſaid ROBERT CHEEK to the lords in parliament concerning the ſaid barony, it is ordered by the lords in parliament aſſembled, That the cauſe concerning the whole matter, ſhall be heard at this bar on Monday the 27th of this inſtant Auguſt, at 9 of the clock in the morning, at which time all parties concerned are to attend with their counſel, and may have copies of the ſaid petitions in the mean time if they pleaſe.

Lunæ 27 *Aug.*

Ordered, That the cauſe between Mr. CHEEK and Mr. MILDMAY ſhall be heard on Thurſday next in the morning at this bar.

Mercurii 5 *Sept.* 1660.

Ordered, That the petition of Mr. MILDMAY, concerning the barony of Fitzwalter, ſhall be taken into conſideration at the ſame time when Mr. ROBERT CHEEK's petition is conſidered of. Ordered, That a petition of HENRY MILDMAY, eſq; directed to this houſe, and a petition to his Majeſty, with his Majeſty's anſwer thereunto, concerning the barony of Fitzwalter, ſhall be taken into conſideration by this houſe at the ſame time, when the petition of ROBERT CHEEK, eſq; concerning the ſame matter ſhall be conſidered, and that timely notice be given, that both parties may provide for the hearing accordingly.

Jovis, 20 *Febr.* 1667.

A petition was preſented to the houſe, and read as followeth,

To the King's moſt excellent Majeſty.

The humble petition of BENJAMIN MILDMAY, Eſq;

Sheweth,

THAT HENRY MILDMAY, your petitioner's brother, lately deceaſed, by petition to your Majeſty, in his life time, did ſet forth his title to the barony of Fitzwalter; and being a minor moſt humbly pray'd your Majeſty's protection againſt the pretence and claim of ROBERT CHEEK, eſq; to the ſaid barony, to which your petitioner's brother was heir at law, that nothing might be

be done to the diſinheriſon of his title thereunto, and that he might be heard concerning the ſame.

Upon which petition your Majeſty was graciouſly pleaſed then to order, in the behalf of your petitioner's brother, that nothing ſhould be done in the premiſſes until the claim and right of your petitioner's brother were duly heard and conſidered; after which the ſaid ROBERT CHEEK petitioned your Majeſty, and therein ſet forth his pretended claim and title to the ſaid barony; in anſwer whereunto your Majeſty was pleaſed, in Auguſt, 1660, to refer the ſame to the conſideration of the lords then aſſembled in parliament, to hear the pretences of the parties concerned, and to certify to your Majeſty what they conceived juſt and fit to be done therein, but in that parliament the cauſe came not to hearing, ſo as nothing was then concluded.

That your petitioner's ſaid brother is ſince dead, without iſſue, and your petitioner is next heir to the ſaid barony in manner following. (*viz.*) ROBERT FITZWALTER, your petitioner's anceſtor, whoſe heir at law to the ſaid barony your petitioner is, was ſeiſed as of fee and right to him, and his heirs, of the ſtile and dignity of baron Fitzwalter, and in the time of your Majeſty's royal predeceſſor king EDW. I. was ſummoned to ſeveral parliaments by the name of ROBERT FITZWALTER, and accordingly ſate therein.

That by divers deſcents the ſaid title and dignity lineally deſcended and came unto JOHN RATCLIFF, as couſin and heir of the ſaid ROBERT, (that is to ſay) ſon and heir of ELIZABETH, lady Fitzwalter, daughter and ſole heir of WALTER, lord Fitzwalter, brother and heir of HUMPHREY, lord Fitzwalter, ſon and heir of WALTER, lord Fitzwalter, ſon and heir of another WALTER, lord Fitzwalter, ſon and heir of JOHN, lord Fitzwalter, ſon and heir of ROBERT, lord Fitzwalter, ſon and heir of the firſt mentioned lord Fitzwalter.

The ſaid JOHN RATCLIFF, at ſeveral times, in the reign of your Majeſty's predeceſſor king HENRY VII. was ſummoned to parliament by the name of JOHN RATCLIFF de Fitzwalter, chivaler, and did ſit in parliament. And after by an act of parliament holden in the eleventh year of the ſaid king HENRY VII. was attainted of high treaſon, and died, having iſſue ROBERT RATCLIFF, his ſon and heir; and by ſeveral acts of parliament holden in the ſeveral reigns of king HENRY VII. and king HENRY VIII. the ſaid attainder was reverſed, and the ſaid ROBERT, and his heirs, reſtored to the title and dignity of lord Fitzwalter, as if no attainder had been made againſt JOHN RATCLIFF de Fitzwalter, and the ſaid ROBERT RATCLIFF accordingly enjoyed the ſaid barony; and afterwards, in the reign of king HENRY VIII. was ſummoned to parliament, and ſate by the name of ROBERT RATCLIFF de Fitzwalter, chivaler; which ſaid ROBERT was after, by the ſeveral letters patents of king HENRY VIII. created viſcount Fitzwalter, and earl of Suſſex, to him, and the heirs males of his body, and died, having iſſue the firſt HENRY, earl of Suſſex, and ſir HUMPHREY RATCLIFF, father of the right honourable EDWARD, late earl of Suſſex.

That by and after the death of the laſt ROBERT, earl of Suſſex, without iſſue of his body, the dignity of lord Fitzwalter is deſcended and come to your petitioner, as couſin and heir of the ſaid HENRY, earl of Suſſex, and couſin and next heir of the firſt mentioned ROBERT, lord Fitzwalter, (that is to ſay) brother and heir to HENRY MILDMAY, lately deceaſed, ſon and heir of ROBERT MILDMAY, eſq; lately deceaſed, ſon and heir of ſir HENRY MILDMAY, knt. deceaſed, ſon and heir of FRANCES, ſole daughter and heir of the ſaid firſt mentioned HENRY, earl of Suſſex, and ſon and heir of ROBERT, firſt earl of Suſſex, couſin and heir of the ſaid firſt mentioned ROBERT, lord Fitzwalter.

Your petitioner therefore humbly prayeth your Majeſty's further conſideration of the premiſſes, that your Majeſty would be graciouſly pleaſed to take ſuch courſe therein, that your petitioner may be heard concerning his right to the ſaid barony of Fitzwalter, and that he may be quieted in

this title, if the ſame ſhall appear to be in your petitioner, in ſuch ſort as your Majeſty ſhall ſeem meet.

And your petitioner ſhall pray, *&c.*

CHARLES, R.

We are graciouſly pleaſed to refer this petition to the houſe of peers, to take the petitioner's claim and title into their conſideration, and to do and determine thereupon what ſhall be found juſt and right. Given at our court at Whitehall, the twenty firſt day of November, in the nineteenth year of our reign, 1667.

By his Majeſty's command,

Arlington.

Hereupon the houſe made this order following.

Upon reading the humble petition of BENJAMIN MILDMAY, eſq; directed to the King's moſt excellent Majeſty, concerning his claim to the title and barony of Fitzwalter, and his Majeſty's reference to this houſe made thereupon, to do and determine what ſhall be found juſt and right: It is ordered by the lords ſpiritual and temporal in parliament aſſembled, That counſel ſhall be heard at the bar of this houſe on Thurſday the 12th day of March next, at ten of the clock in the forenoon, for making out the title pretended to in the ſaid petition, whereof his Majeſty's attorney-general is to have timely notice, to the end he may then alſo be heard in his Majeſty's behalf, and that ROBERT CHEEK, eſq; in the mean time, may have a copy of the ſaid petition.

Jovis, 5 Mar. 1667.

Whereas by order of this houſe, dated the 20th of February laſt, counſel was appointed to be heard at the bar for making out of the title which BENJAMIN MILDMAY, eſq; pretends to the barony of Fitzwalter, ſet forth in his humble petition to the King's Majeſty, and by his Majeſty referred to the hearing and determination of this houſe: It is ordered by the lords ſpiritual and temporal in parliament aſſembled, That counſel ſhall be heard concerning the ſaid matter on Wedneſday next the firſt day of April, at ten of the clock in the forenoon, whereof timely notice is to be given to his Majeſty's attorney-general, to the end he may then alſo be heard on his Majeſty's behalf.

Mercurii, 1 *April.* 1668.

Whereas counſel and witneſs have been this day heard at the bar on the behalf of BENJAMIN MILDMAY, eſq; to make out his claim to the title of the barony of Fitzwalter; it is ordered, that on Tueſday next Mr. attorney-general ſhall be heard what he hath to offer concerning the ſaid barony on his Majeſty's behalf, at which time alſo ROBERT CHEEK, eſq; ſhall be heard by his counſel at the bar, concerning his claim to the title of the ſaid barony, if he do deſire it.

Upon hearing what the counſel of BENJAMIN MILDMAY, eſq; hath offered at the bar for making out his claim to the barony of Fitzwalter; it is ordered that it be referred to the lords commiſſioners for privileges, to conſider of precedents where barons being created to higher titles of honour, the barony hath been ſo given to elder ſons, as that titles of honour have been multiplied thereby, their lordſhips to meet thereon on Friday next at three of the clock in the afternoon, and to make report to the houſe.

Martis,

Martis, 7 Aprilis 1668.

Whereas Mr. attorney-general MONTAGU, on his Majeſty's behalf, and other counſel, have been this day heard at the bar, in the matter of fact on the behalf of ROBERT CHEEK, eſq; who pretendeth a claim to the title of the barony of Fitzwalter, as alſo on the behalf of BENJAMIN MILDMAY, eſq; in anſwer thereunto.

This houſe being unſatisfied concerning the iſſue of EGREMOND RATCLIFF, mentioned in the pedigree, by which the ſaid parties make out their claim; it is ordered, that counſel ſhall be heard at the bar on Tueſday the fourteenth inſtant, at ten of the clock in the forenoon, to make out the matter of fact concerning the iſſue of the ſaid EGREMOND, and at what time they failed.

Martis, 14 Aprilis 1668.

Ordered, That counſel ſhall be heard to morrow morning concerning the title of the barony of Fitzwalter.

Mercurii, 15 Aprilis 1668.

Ordered, That on Tueſday morning next, counſel ſhall be heard concerning the title to the barony of the lord Fitzwalter.

Martis, 21 Aprilis 1668.

Whereas counſel was heard this day at the bar on behalf of BENJAMIN MILDMAY and ROBERT CHEEK, eſqs; in relation to their reſpective claims to the title of the barony of Fitzwalter, to make out the matters of fact concerning the iſſue of EGREMOND RATCLIFF, mentioned in the pedigree, and at what time they failed, which being not ſo made out, it is ordered by the lords ſpiritual and temporal in parliament aſſembled, That counſel ſhall be heard for the ſaid parties on Friday the 24th of April inſtant, to the matter of law in thoſe points, Whether a barony in fee ſhall deſcend to the half blood? And whether a barony in fee may be merged in an earldom in tail? or to any other matter of law concerning this buſineſs.

Copy of a paper which I had from the earl of Clarendon, *init.* Nov. 1699. endorſed by the late earl of Angleſey (grandfather of the preſent earl) thus,

The caſe of BENJAMIN MILDMAY, eſq; for the barony of Fitzwalter, April, 1668. Had from ſir HENRY YELVERTON.

The caſe of B. MILDMAY, eſq; for the barony of Fitzwalter, now to be argued.

THE lords having waved the barony by tenure (a claim not in itſelf extinguiſhed, as may appear by a *proviſo* in the bill that reſpects wardſhips, the right of ſitting in parliament being ſtill reſerved) and the iſſue of EGREMOND RATCLIFF, who was attainted for treaſon being waved, (becauſe there wanted ſufficient proof) their lordſhips reſerved two points to be argued by the King's counſel, that of the half blood, and the involving in the earldom.

(1) For the half blood, It is worth obſerving that the half blood and the *poſſeſſio fratris* have ſome real difference, though perhaps as to the deſcendency of an honour the rule may be the ſame.

For the *poſſeſſio fratris* is when there is a brother poſſeſſed of an honour in fee, and he hath one or more ſiſters of the whole blood with him, and his father, by a ſecond *venter*, leaves a ſon.

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The half blood in MILDMAY's case is, The second earl of Sussex, HENRY, had two wives; by the first, ELIZABETH, daughter of the duke of Norfolk, he had two sons, THOMAS, who died without issue, and HENRY, both which were earls; this HENRY left ROBERT, who died without issue *anno* 1629. Now this HENRY, the second earl of Sussex, had a second wife, ANNE, daughter of sir PHILIP CALTHORP, by whom he had EGREMOND RATCLIFF, and the lady FRANCES, the ancestor of MILDMAY. And by this pedigree it appears plainly, that sir HUMPHREY RATCLIFF of Elstow, was brother to HENRY, the second earl. Now the question is, Who is nearer of kin to ROBERT, the grandchild of HENRY, the second earl—the issue of EDWARD, earl of Sussex, the son of sir HUMPHREY, the second brother of HENRY, the second earl, or the issue of the lady FRANCES RATCLIFF, the issue of that HENRY, by his second wife.

The case being thus stated, let us examine the reasons why there is a difference in the descendency of honours from all other estates; and if we consider the reasons in the *possessio fratris*, we shall find, though the case is not the same, the reason of the law is,

That there is no *possessio fratris* of an honour was my lord COKE's opinion, in his comments upon LITTLETON's tenures, *cap.* 6. *sect.* 8. speaking of that rule in law, he tells us, That when no possession can be had to a man and his heirs, there the rule of *possessio fratris* doth not hold, as in dukes, marquisses, earls, viscounts and barons: And this was argued seriously and positively delivered for law by all the judges, and by the lords house in the case of CHARLES LONGUEVILLE, lord Grey of Ruthyn, in the parliament held by the last king, *anno* 1640. Jan. 20, or thereabouts. See sir GEO. CROKE's reports *.

(2) The second question in debate is, Whether a baron, who hath his honour in fee, being created an earl, to him, and his heirs males, this earldom doth attract, merge, or involve in itself the barony.

Mr. MONTAGU, without doubt, did argue more ingeniously than truly, when he inferred, That because the descents of lands and honours differ in divers

* Judge CROKE, in his third volume, p. 601. reports that case thus.

The lord GREY's case.

Memorandum, That in this parliament a question was moved concerning the barony of Ruthyn, where the case was, That one being created a baron, to him, and his heirs, hath issue a son and a daughter by one *venter*, and a second son by another *venter*, and the eldest son hath the barony, and sits in parliament, and afterwards dies without issue, whether the second son shall have that dignity as heir to his father, or the sister shall have it as *possessio fratris* in lands, &c. and desired to have the opinion of the judges therein? And all the justices resolved, That there is not any *possessio fratris* of a dignity, but it shall descend to the son; for the younger son is *hæres natus*, and the sister is only *hæres facta*, by the possession of her brother, of such things as are in demesn, but not of dignities and such like, whereof there cannot be an acquisition of the possession, according to Co. LITT. 15. b. and Co. rep. lib. 3. fol. 42. RATCLIFF's case.

Now this is law for these reasons,

First, Because he that will, in case of honour, make himself a title, must make himself direct heir to him in whom the honour began, and not to him who did last use the name, otherwise he cannot be entitled to the precedency.

Secondly, From the reason of the inheritance, The rule of *possessio fratris* doth only hold in those things whereof there may be a greater possession gained than what descended. Honour is an inheritance inherent in the blood, whereof an action auncestrel doth not lie, whereof a man is as much in possession before he is lord, as after.

Thirdly, He that claims a right to an honour must prove it by record; baron, or no baron, is to be tried by record. The record is in him that was first created baron, so his heir, and not the heir of the last possessor, is heir to him in whom the record began.

Fourthly, The precedents of all times run contrary to the rule of *possessio fratris*. The common law doth not apply that to the descents of honour: It doth to other gross inheritances, as will appear.

1. In the highest case of dignity, that of the King, the rule holds not. For we see both queen MARY and queen ELIZABETH succeeded their brother king EDWARD, though they were all of different *venters*, when the issue of the whole blood was the sister of HENRY VIII. married to JAMES, king of Scotland.

2. In the lowest degree of dignity, or bearing of arms, the brother of the half blood will bear without difference, notwithstanding the possession of the elder brother.

3. The precedents of all times have gone that way, as will appear in the descents of the lord Fitzwalter, lord Mortimer of Wigmore, lord Wells, lord Fauconberg, lord Ogle, lord de la Ware, twice solemnly adjudged; and if this point should be shaken, there are few of the antient honours of England but must lose their present places in parliament.

Now he that considers this argument, will find, that though the half blood differs from the *possessio fratris*, yet the reason of law is the same.

particulars,

particulars, therefore they do in all, and in all thoſe differences he will find, 'tis not the law, nor the reaſon differs, but that groſs inheritances deſcend not as ſuch other hereditaments do, upon the rules before given.

He that ſhall ſay, That becauſe a baron is made an earl, he neither hath more voices in parliament, nor retains more chaplains than an earl doth that never was a baron, can logically argue no farther than that the privilege of an earl exceeds no more that of a baron, than in chaplains, the number of three or five, or in the parliament, the upper or lower bench, ſince they are peers alike, and have voices alike.

He that ſhall tell us, that an earl, who is not a baron, his ſon ſhall not be called my lord, muſt, at the ſame moment, degrade all the ſons of the moſt antient earls, though now extinct, ſince the firſt earls had no baronies at all in them. And there is nothing ſo great a ſign of antiquity, as that they had no baronies. The firſt that writ himſelf by any additional titles was WILLIAM DE VALENCE, created by HEN. III. earl of Pembroke, who after the manner of France, writ himſelf by the name of all the manors he was lord of; and 'tis the greateſt argument of the antiquity of that moſt antient family DE VERE, earl of Oxford; That they had no baronies in them till ROBERT, the third earl, married the daughter and ſole heir of the lord Bulbeck.

It is alſo very obſervable, That earldoms went to heirs general, 'till afterwards they came to bring in by patents limitations to heirs males.

He that ſhall look into antiquity ſhall find this univerſally confirmed. Thus WILLIAM, earl Warren and Surrey, who married GUNDRED, the daughter of WILLIAM the Conqueror, had ſeveral ſons; the eldeſt, WILLIAM, had one only daughter, ISABEL, who carried the earldom from her uncle to both her huſbands, ſee MILLS. And in the ſuit in the firſt parliament of the laſt King for the office of great chamberlain, the judges ſeverally declare, that the heirs general were barred of the earldom of Oxford by virtue of an entail made 16 RICH. II. by ordinance of parliament, which ſhews both the antiquity of that honour, and the right of the preſent earl to it.

It appears alſo by all precedents, ſince hereditary honours were fixed, that he who was once ſummoned to parliament was erected and created a peer; which hereditament, having no limitation, was in fee-ſimple; and therefore HEN. VI. when he ſummoned ſir JOHN BROMFLET to be lord Veſcy, he inſerted theſe words, *volumus tamen vos & hæredes veſtros maſculos de corpore exiſtentes eſſe barones de Veſcy*, becauſe 'twas well known, without that limitation, the honour would have deſcended to the heir general.

He that ſhall affirm, that the King in making a baron an earl, doth multiply peers, in caſe the barony by deſcent ſevers from the earldom, doth affirm that which is no abſurdity; for if the earldom be entailed upon heirs males, and the barony deſcends to the heirs general of the firſt baron, the King doth limit his laſt honour, though the firſt grant was not, which is the true cauſe why many baronies out-laſt earldoms, and divers ſever from them.

But he that ſhall affirm that an earldom limited to heirs males ſhall involve a barony in fee, muſt at the ſame time affirm, 'tis in the preſent King's power to extinguiſh any grant of his predeceſſors, and how ſafe then moſt honours of England will be any man may judge.

This will appear, if a man poſſeſſed of a barony in fee, and hath one daughter, the King creates him an earl, to him, and his heirs males, for want of ſuch iſſue, to his brother; ſhall this daughter be barred of the barony ſhe would have had, becauſe her father was made an earl?

But ſuppoſe this earldom, for want of heirs males, be entailed quite to another family, as there are frequent precedents; ſhall the barony then attend the earldom? if ſo, then he is the baron that is not of the blood; if not, then the honours are ſevered.

To ſay they only part when the blood parts, is to beg the queſtion, for then 'tis not the earldom, but the blood joined with the earldom attracts; and if

the earldom have no efficacy without the blood, it ſeems the honour runs in the blood, and when the blood goes away 'tis fit the honour ſhould.

But to go further, if an earldom entailed to heirs males be created a dukedom to heirs general, and both by letters patents, and the earl created a duke leave one daughter, the daughter, who is the ducheſs, ſhall ſhe carry the earldom? then one record may vacate another, and no brother of an earl that hath a daughter is ſure to enjoy his inheritance if the King pleaſeth to advance his brother.

And whereas Mr. MONTAGU objected, the danger of a baron without an eſtate, becauſe moſt eſtates follow the heirs males, he will find by the ruin of many great families not true, That earls have continued with ſmall fortunes when daughters have carried away the eſtate, as in the preſent earls of Shrewsbury and Nottingham.

And though ſome object, 'tis a way will increaſe the number of peers, his Majeſty may do that whenever he pleaſes; but he that looks into antiquity will find, that when one honour hath expired for want of heirs males, five have died by heirs females; for there being no copartnerſhip in honours, whenever there are two daughters the honour is loſt, unleſs by his Majeſty's favour; and do but examine how many honours are ſo loſt.

And tho' it be no diſadvantage for an earl to be deprived of baronies, ſince neither their dignity, precedency, nor voice in parliament depends on it, yet there is but a few concerned in it; ſince many, both baronies and earldoms, upon forfeitures, have been reſtored to heirs males, as Northumberland, by queen MARY, *&c.*

Thus much for the argument in *theſi.*

The precedents urged by Mr. MONTAGU were twelve.

In anſwer to the ſix firſt that ended in three daughters, this is ſaid.

1. It is no argument that every earl that calls himſelf by a barony is lawful poſſeſſor; for divers earls then would have the ſame barony; as the earls of Northumberland and Danby, in their ſtalls at Windſor, ſtile themſelves lord Latimer, when they had no more right to it than either the earl of Exeter, or lord Cornwallis, who alſo deſcended of two other ſiſters, and when, in truth, the barony is in the King, and ſo divers others.

2dly. Divers earls call themſelves by titles which never were baronies, as lord of the honour of Petworth, and WILLIAM DE VALENCE, beforementioned, called himſelf lord of all his manors.

3dly. Divers lords call themſelves by baronies adjudged againſt them, as the earls of Oxford, in their baronies, the lord Berkeley, in the barony of Mowbray, when the lord Maltravers, who deſcended alſo from one ſiſter, being by the King ſummoned as lord Mowbray, determined the queſtion.

The ſecond ſix that ended in one daughter were theſe.

1. AMISIA, daughter of HUMPHREY FITZ-ALAN, earl of Arundel, married to JAMES BOTELER, earl of Wiltſhire; ſhe died without iſſue, the barony reverted.

2. A daughter of the earl of Kildare, married to DIGBY. To that, 'tis owned, the King would not ſuffer the ſuit, created her a baroneſs, which is a compoſition, or act of force.

3. The caſe of lady Pembroke to the barony of Clifford; and yet HENRY lord CLIFFORD was ſummoned to parliament.

This was done to my lady's apparent injury, who put in her claim after my lord Clifford was ſummoned, and did as much as a *femme covert* could do to oppoſe. This lord Clifford died, and lady Pembroke had two daughters, both which have children, and ſo that controverſy is out.

4. The fourth is the caſe in controverſy.

5. The fifth of HENRY, the 18th earl of Oxford, who 'tis true had but one aunt of the whole blood, but had three ſiſters of the half, married to the earl of Derby, Pembroke, and lord Norris of Ricott.

6. The

6. The ſixth is the caſe of the earl of Kent, where Mr. MONTAGU would perſuade, the barony of Grey of Ruthyn, was only adjudged upon the *poſſeſſio fratris*, whereas that queſtion could not come in debate, 'till the involving was over-ruled: For CHARLES LONGUEVILE, lord Grey, claimed as heir of the lady SUSAN LONGUEVILE, ſole daughter of CHARLES, and ſiſter of HENRY, earl of Kent, who married the lady ELIZABETH TALBOT. Now the queſtion about the *poſſeſſio fratris* was the King's title, which had it held, had deprived both the lord Grey and the earl of Kent of the baronies; for GEORGE, the ſecond earl of Kent, had two wives; by the firſt he had RICHARD, earl of Kent, and two daughters; by the ſecond wife, he had ſir HENRY GREY, the anceſtor of the lady SUSAN LONGUEVILE, and ANTHONY GREY, the anceſtor of the earl of Kent, ſo that it was neceſſary the involving ſhould be over-ruled before the King's counſel could demand the baronies to be in the King, becauſe RICHARD, earl of Kent, ſeized of the baronies in fee, had two ſiſters of the whole blood, when both ſir HENRY GREY, the anceſtor of the lord Grey of Ruthyn, and ANTHONY GREY, the anceſtor of the earl of Kent, were both of the half blood to RICHARD.

But for more direct precedents, 'tis no wonder if we have ſo few, ſince ſo many baronies have been loſt by ſeveral daughters.

Firſt, Sir WILLIAM CECIL, grandchild of the earl of Exeter, in right of his mother, ſole daughter of the earl of Rutland, had by determination the barony of Roſs from king JAMES: And though the earl of Rutland's ſon was allowed to call himſelf lord Roſs of Hamlake, Trusbut and Belvoir; yet ſince the barony was but one, and ſir WILLIAM CECIL had the precedence, and the lord Roſs was only titular by the courteſy of England, and not a peer, 'tis full in our caſe.

And this was the reſolution of all the judges, confirmed by a judicial vote of the lords houſe in the firſt parliament of king CHARLES: For when the lord Willoughby ſued both for the earldom of Oxford, the baronies and office of lord great chamberlain,

The lords reſolve, That the earldom belongs to the heir male by virtue of the entail in RICHARD II.'s time, *anno* 16.

That the baronies were in the King's diſpoſal, becauſe JOHN, the fourth earl of Oxford, left JOHN the fifth, and three daughters; and JOHN the fifth dying without iſſue, and there being no copartnerſhip in honour, his Majeſty might diſpoſe them where he pleaſed: And 'tis obſervable, that though the judges did intimate that the ſucceeding earls uſed theſe titles; yet the lords reſolved them to be in the King.

In theſe two points the judges and houſe were unanimous; but about the office there is firſt a *ſalvo* to his Majeſty's right, and then there were but three and two, and upon a nice point, Whether a man poſſeſſed of an office in fee in the kingdom might entail it? For there was an entail had it proved good.

And whereas it hath been objected in the lord Grey's caſe, that it was a haſty judgment, in ill times, and by the power of the earl of Eſſex:

It was five days argued at the bar; it was two months determining; the ſuit began December 6. 1640. 'twas not determined till February 5, two months after: My lord's writ bears date Feb. 6. he was brought in Feb. 8. lord Audley one of the barons: He ſate there 'till June 1642, when he went with the King to York, for which, with eight other lords, he was impeached June 22. 1642. And though the earl of Eſſex voted for him, he was a great friend of the earl of Kent's, and had his proxy; and 'tis not probable thoſe times would have favoured my lord Grey that went to York againſt the earl of Kent, who was after lord keeper by authority of parliament.

Ante p. 265. Mr. OFFLEY's argument in the lords houſe, for the barony of Fitzwalter, wherein Mr. attorney MONTAGU's argument, which was word for word the ſame with that for the lord Roſs, is anſwered, as alſo the objections againſt the half blood.

THAT BENJAMIN MILDMAY, now petitioner before your lordſhips, may be admitted to the title and dignity of lord Fitzwalter, according to the right deſcended to him, ever ſince the 23 EDW. I. from his anceſtors.

Your lordſhips have, purſuant to Mr. attorney MONTAGU's requeſt, commanded us to argue two points; the one, whether the half blood ſhall be any impediment to claim a barony by writ; the other, whether the coming of an earldom in tail to a barony in fee, created by writ, ſhall merge and drown the barony in fee. Two points.

If we ſhall make it appear, that the half blood is no impediment, if we ſhall prove to your lordſhips that the barony ſubſiſts, not drowned, or extinct in the earldom, I doubt not of ſucceſs to my client, and queſtion not but your lordſhips judgment will be to reſtore your petitioner.

But before I proceed, I beg your lordſhips leave to make uſe of ſome caſes, that may concern ſome of your lordſhips titles, for now the title of peerage is in queſtion: As this houſe are the proper judges, ſo their caſes are the beſt precedents; but I ſhall do it with all the care and tenderneſs I can, leſt I ſhould beget in your lordſhips a prejudice to the cauſe, and ſo produce an inconvenience to my client's.

As to the half blood the caſe ſtands thus, ROBERT RATCLIFF, earl of Suſſex, and viſcount and baron Fitzwalter, had two ſons, HENRY, earl of Suſſex, viſcount and baron Fitzwalter, and ſir HUMPHREY RATCLIFF of Elſtow; HENRY, the firſt ſon, earl of Suſſex, viſcount and baron Fitzwalter, had two wives; his firſt wife, ELIZABETH, daughter of THOMAS HOWARD, duke of Norfolk, by her he had THOMAS, earl of Suſſex, viſcount and baron Fitzwalter, who died *ſans* iſſue, 25 ELIZ. and HENRY, earl of Suſſex, viſcount and baron Fitzwalter, who had iſſue ROBERT, earl of Suſſex, viſcount and baron Fitzwalter, who died *ſans* iſſue 1629. So the iſſue by the firſt wife was ſpent.

The ſecond wife was ANNE, daughter of ſir PHILIP CALTHORP, knight, by her he had iſſue EGREMOND RATCLIFF, who (as we conceive, and they prove nothing to the contrary) died without iſſue in his brother's life-time, and a daughter, the lady FRANCES, married to ſir THOMAS MILDMAY; ſo that now the iſſue male of HENRY, earl of Suſſex, the firſt ſon of ROBERT, being ſpent, the earldom of Suſſex came to EDWARD, earl of Suſſex, who was the firſt ſon of ſir HUMPHREY RATCLIFF, the ſecond ſon of ROBERT, who died in 1642, without iſſue; ſo now the queſtion is, whether my client, from the lady FRANCES, wife of ſir THOMAS MILDMAY, who had iſſue ſir HENRY MILDMAY; he, ROBERT MILDMAY, who had iſſue HENRY MILDMAY, who died 1661, without iſſue, and BENJAMIN MILDMAY, my client, who is the petitioner.

So that though my client is but of the half blood, to EDWARD, earl of Suſſex, who was laſt earl, yet of the whole blood, to HENRY, earl of Suſſex, though of the half blood, to ROBERT, who died in 1629. Yet notwithſtanding all this, I humbly conceive, the right is with the petitioner, as to the barony of Fitzwalter.

Al demi ſang.

For where a man muſt convey his title to an inheritance, as heir to him that was laſt actually ſeiſed, the half blood is a clear bar and impediment, as in caſe of lands, tenements, ſeignories, and other ſuch like hereditaments; and this is the reaſon of the rule of *poſſeſſio fratris*; for if the eldeſt brother by the firſt *venter* be once ſeiſed, the younger brother by the ſecond *venter*, who is

but of the half blood, can never make himſelf heir to his eldeſt brother, who was laſt ſeiſed; therefore of neceſſity his ſiſter of the firſt *venter*, who can make herſelf heir to the elder brother, who was laſt ſeiſed, muſt inherit, for *poſſeſſio fratris de feodo ſimplici, facit ſororem eſſe hæredem.*

But if the eldeſt brother be never ſeiſed, then the younger brother hath it, as heir to his father, who was laſt ſeiſed; for he is of the whole blood to his father, and his ſiſter is excluded, for ſhe is *hæres factæ*, only by the poſſeſſion and acquiſition of her brother, but the brother by the ſecond *venter* is *hæres natus.*

But where an acquiſition and poſſeſſion is not requiſite, but the blood is the main matter that makes the title, the half blood ſhall never be barred; for if he be of the whole blood to him that is the firſt fountain, that is enough; he ſhall receive no bar after in the ſtream; therefore in all caſes where it reſts upon the blood, the half blood ſhall take, page 43. ELIZ. C. B. R. BROWN's caſe. Adminiſtrations are to be granted to the brother of the half blood before the uncle, for he is nearer in blood: So it is in caſe of honours, for there he who claims the honour muſt make himſelf heir to him in whom the honour firſt began, and not make his title to him who was laſt ſeiſed of the honour; for ſhould he do ſo, the precedency in honour would be loſt; for the rule of precedency is, that he ſhall always take his place according to his claim, which, if it ſhould be from the laſt ſeiſin, the puiſne baron in time would be preferred before the ancienteſt; therefore he that is but of the half blood to him that was laſt ſeiſed, yet if he be of the whole blood to him in whom the honour began, is well inheritable; for honour being inherent in the blood, there can never be any greater poſſeſſion of an honour than that which deſcends, as there may be of other inheritances.

For this cauſe there lies no action auncеſtrel of an honour, for as to poſſeſſion, a man is as much in poſſeſſion of an honour before he is called lord, as after. Secondly, The title of every barony muſt be by record; baron or no baron muſt be tried by record, Co. l. 6. 57. earl of Rutland's caſe; ſo that whoſoever muſt make his title to a barony, muſt reſort to the record, beginning his title from thence, and ſo conſequently muſt make himſelf heir to the perſon firſt ennobled by that record, which a daughter cannot, for ſhe is only *hæres factæ*, by the poſſeſſion of her brother, for the ſon of the half blood is *hæres natus*; ſo that here poſſeſſion will do no good, but the blood only. Thirdly, If we compare nobility with that which is above it, the deſcent of the crown is not hindered by the half blood; for the crown deſcended, and the lands and honours with the crown, from EDWARD VI. to queen MARY, and from queen MARY to queen ELIZABETH, yet both theſe were of the half blood; and it is as natural to believe, that the qualities that are inherent in the fountain of honour in point of deſcent are in ſome meaſure communicated to the ſtreams.

Compare nobility likewiſe with that which is below it, the heralds will not offer to ſay that the half blood is any impediment to bear an eſcutcheon, or coat of arms, nay, they have not in all their art ſo much as a note of difference, or diſtinction, when the coat of arms is borne by one of the half blood.

There may an objection be made, that the ſitting in parliament may be as an actual poſſeſſion, or *quaſi* a poſſeſſion; ſo the brother ſitting, hath given a title to the ſiſter to claim, and ſo our title is out of doors, that came in only from the firſt blood. We anſwer, There is incident to this great dignity of baronage, an office or ſervice of great truſt and honour, as juriſdiction in this houſe, vote and voice here; but yet the ſitting here is but an exerciſe and performance of that ſervice, not any profit that attends the honour. Now that which gives a poſſeſſion, muſt be that which we call in law an *explées*; that is a thing that muſt yield ſome profit, which this ſervice, in the eye of the law, can never do. So it is agreed, COKE, *lib.* 7. 34. NEVILL's caſe, ſo can give no poſſeſſion; for the caſe of an advowſon, and a rent, there is an *explées* of them; an advowſon is aſſets in law, I am ſure a rent is ſo. Ante p. 137.

For precedents. The point is no new point, but hath been agreed and resolved solemnly upon debate, and honours have gone accordingly. Hilr. 34 Eliz. B. R. Ratcliff's case, Coke, *libr.* 3. 42. resolved by all the judges of the King's bench. So held my lord Coke, Instit. 1. pag. 15. B. And Hil. 16 Car. I. Cro. p. 601. In my lord Grey's case, resolved by all the judges of England in the house of lords, and ordered accordingly by the lords; and I beg your lordships to observe with what deliberation and advice this judgment was given.

The 8th of December, the petition of Charles Longueville, esq; was preferred 1640; the 18th of December, the officers of arms were enjoined to assist both parties in making out their pedigrees; 30 December, Counsel heard upon it; 29 January, Mr. attorney argued for the King; 1 February 1640, the judges delivered their opinions severally, not one man dissenting; 5 February, the lords agreed with the judges, and accordingly Mr. Longueville sate in the lords house, until 1642, when he had the honour to be impeached, for the service of the late King: This was not a hurried advice, but a serious, deliberate resolution of their lordships, built upon the weightier resolutions, required of the law of England.

It hath also been enjoyed quietly in other baronies; in the case of my lord de la Ware, a barony by writ; John, lord la Ware, had issue John, lord la Ware, and Catherine, married to Nicholas Latimer; John, lord la Ware, the son, had issue Roger, lord la Ware, which Roger, by Elizabeth, daughter of the lord Wells, his first wife, had issue John and Thomas, who both succeeded successively, and died without issue; Roger, lord la Ware, by his second wife Eleanor, daughter of the lord Mowbray, had issue Johanna, wife of Thomas West, who had issue Reginald West, who, though but of the half blood, carried away the barony from John Griffin, of the whole blood, *viz.* son and heir of Catherine, daughter and heir of Catherine Latimer, daughter of John, lord de la Ware, first named.

The barony of Ogle is by writ. Robert, lord Ogle, was summoned by writ, and had two wives; by Dorothy Widerington, his first wife, he had issue Robert, lord Ogle, and Margaret; and by Joan Ratcliff, his second wife, he had issue Cuthbert, lord Ogle, who had issue Thomas; Robert, lord Ogle, the son, died without issue 40 Eliz. Cuthbert, lord Ogle, of the half blood, was summoned to parliament, and though Cuthbert, left only daughters, the daughter that married Cavendish, carried away the barony.

So the barony of Burnel was a barony by writ; and Philip, lord Burnel, who was summoned by writ, had issue Edmund and Maud; Edmund succeeded his father, and died without issue 9 Edw. III. Maud had two husbands; by John, lord Lovel, her first husband, she had issue John, lord Lovel, who after had issue another John, lord Lovel, who died without issue; and by John Handlo, her second husband, had Nicholas Burnel, *alias* Handlo, who carried away the barony. These are sufficient precedents; I should be troublesome to your lordships to cite more.

To the attraction, or extinguishment in the earldom.

For that this is the case;

Robert Ratclife, viscount and baron Fitzwalter, being made earl of Sussex, the barony of Fitzwalter went to him that was the earl; and whether by the death of Edward, earl of Sussex, who was viscount Fitzwalter, and died 1642, without issue, the barony is not drowned, the earldom being extinct, or the barony shall go back to the heir general, is the question?

With submission to your lordships judgments, I humbly conceive they rest distinct, and not merged; nay, though a man be made an earl of the same place he was baron of before:

The order ſeems to turn two ways as to the times;

1. Whether, at the very acceſſion of an earldom to a barony, it is not drowned and gone, and never after to be revived; for that is the nature of all extinguiſhments; the thing extinguiſhed is dead, and can never riſe again, and is as if it never had a being; ſhould this be ſo, that at the very firſt coming it ſhould be extinguiſhed, it would put theſe two inconveniencies;

First, All the earls baronies in England were gone; ſo at one blow deprives your lordſhips of all your baronies; ſo that in truth, he that is an earl is no baron, why? becauſe his barony is extinct in his earldom, and dead; he is an earl indeed, but no baron.

Secondly, It ſubjects all your lordſhips to the court marſhal, if one earl uſeth but the title of a barony; for if their baronies are extinct it is by rule of law; for as they would have it by a rule of honour; then the rule of honour ſaith the barony is gone; that earl that writes himſelf baron of any place, hath broke that rule of honour, ſo ſubjects himſelf to be queſtioned in that court of honour that hath proper cognizance of it; but if they mean, that by the acceſſion of an earldom, the barony was ſo drawn and converted, that it went along with the earldom, and when the earldom was extinct, the barony was ſo too; I humbly conceive, they can never be admitted, but muſt ſtand diſtinct.

1. Take them to be ruled by the rules of honour, baronies and earldoms always ſtand in title together, and diſtinct, for there is a great difference between titles of dignity, and names or titles of worſhip: In titles of dignities they always ſtand without drowning the one the other, Co. *Inſtit.* 2. 595. If a knight be created a baron, yet he remains a knight ſtill, and if a baron be created an earl, yet the dignity of a baron remains ſtill, *& ſic de cæteris*, ſaith my lord COKE.

'Tis true, *per nomen Regis, nomen ducis emergitur*, that is, by the law of the crown, as it is inconſiſtent for any man to be both Prince and ſubject; but in names and titles of worſhip, if they come to a name of dignity, the name of worſhip is loſt, and ſhrinks into the name of dignity; as if an eſquire, which is no name of dignity, but of worſhip, is made a knight, the degree of eſquire is gone, and can no more be named in any judicial proceedings.

Thus then they ſtand diſtinct in title, then that which muſt confound them, muſt be the rule of eſtates; this cannot do it.

But here, at firſt, I muſt beg leave to deny that the rule of law takes no place in, or not regarded at all, but honours are guided only by the rule of honours: For honours never differ from the ordinary rules of law, either in point of creation or deſcent, but only when the reaſon of that difference ariſeth from ſuch conſiderations as do chiefly reſpect the blood that was firſt ennobled: This is the reaſon there can be no *poſſeſſio fratris* of an honour, for this cauſe there can be no collateral deſcent, but only *in linea recta*; upon this ground honours cannot be cut off by fine and recovery, for then the very firſt conſideration they are built upon will be loſt; this was the inducement that made your lordſhips, 1 Feb. 1640, in the caſe of the earl of Kent, reſolve, That no peer in England can drown, or extinguiſh his honour, either by ſurrender, grant, or fine, or by any other conveyance to the King, or alien it to a common perſon.

But where the reaſon of honour is that which reſpects the blood, the rules of honours are the ſame with the rules of law, and are guided by them; therefore this was reſolved, 18 HEN. VIII. my lord Lovel's caſe, that no honour could be entailed without the word body, according to the rules of entails, and ſeconded by a like reſolution, 1 CAR. I. in the caſe of the earl of Oxford, by the judges in parliament; therefore neither occupancy, nor tenancy by the courteſy, can be of an honour; for by the rule of law, of thoſe things whereof there can be no ſeiſin, there can be neither occupancy nor tenancy by the courteſy. Therefore of a thing that lies in grant, there can be no occupancy, for it is not the ſeiſin, but the deed makes the title. COKE *Inſtit.* 1. 41. *b.* If the party cannot be ſeized, he cannot be tenant by the courteſy.

Ante p. 173.

Object.

Object. But the calling to parliament without the word heirs, makes a fee; this they ſay is a ſpecial kind, incident to an honour.

Anſ. No man ever knew a writ any cauſe to make a title; it is called a writ, *breve, quia breviter dicit*, and in writs the greateſt skill for the framing, is to frame them as ſhort as can be, for the eaſe of the ſubject.

2dly. This writ is not only a writ at law, but a parliamentary writ, which is to be guided according to the rules and cuſtoms of parliament. It can therefore be no objection under heaven; for by the ſame reaſon you leave out (*hæres*) why do you not inſert the word baron in the writ? and why do you not give every baron, their particular baronies? therefore all their baronies are loſt, becauſe none are named in the writ: For, ſays Mr. SELDEN *Tit. honor.* 690. in writs of ſummons to parliament, pleading and other legal inſtrumentes, moſt regularly the word (baron) is omitted, and uſually chevalier ſupplies; as 49 EDW. III. WILLIAM DE MORLEY, and WILLIAM DE ALBEROUGH, and 3 HEN. VI. they all had the addition of chevalier. 23 H. VI. ROT. 21. *dorſo*, a writ iſſued ROBERT HUNGERFORD chevalier: Sometimes indeed by their baronies they were ſummoned, but rarely, as 7 EDW. III. EDWARDO *baroni de Stafford*; ſo 23 EDW. I. JOHANNI *baroni de Greyſtoke*, omitting their other additions; and no man will conclude, that he is therefore no baron, becauſe he is only termed chevalier, but that *ley & conſuetudo parliamenti*, that calls him chevalier, makes him a baron; and the ſame law that makes him baron, makes him a baron by writ, without the word (*hæres*) not aſſiſted at all with the rules of honour. There is this further in it, he is not noble till he ſits in parliament, and the writ hath no operation or effect, till the ſeſſion comes; the King may, before the ſeſſion, ſuperſede it, the peer may wave it, and ſubmit to a fine, as was reſolved in parliament, 2 JAC. my lord ABERGAVENNY's caſe; and this by the uſage and cuſtom of parliament, that hath appropriated it ſelf with theſe rules, but not for any intrinſick quality of the honour.

Then it muſt be regulated by the rule of eſtates, and the rule of eſtates is in law, that an eſtate tail can never drown a fee, for that, as it would be repugnant to law, it would be ſo to common reaſon; that a matter of a leſſer proportion ſhould extinguiſh a greater: Then the ground of this muſt be wrought by ſome other means, as by the King's letters patents, and the operation of this muſt be by his letters patents: But the King cannot change the deſcent of an acre of land; he cannot make either gavel-kind or burrough-engliſh deſcendible to the eldeſt; and ſhall the patent of an earldom, change the deſcent of a barony? This would ſhake the foundation of moſt of the honours of England; for admit an ancient baron, whoſe barony goes to the heir general, hath one ſole daughter, the King creates him earl in tail, and heirs males of his body, and for want of ſuch iſſue, the remainder to his brother and his heirs; if this ſhould go as they would have it, the daughter ſhall be deprived of her birthright, accrued to her by the grant of a former King, becauſe this King was pleaſed to advance her father; ſo it is in the power of the preſent Prince at his pleaſure, by his letters patents, to take away any deſcending hereditament.

If an ancient baron be created an earl, to him and the heirs male of his body, and for want of ſuch iſſue, to a perſon of another family, and his heirs males, this ancient baron leaves one daughter, this earldom muſt carry away the barony to another family, and quite diſinherit the daughter by letters patents.

3dly. If the change of the deſcent of a barony, be wrought by the acceſſion of an earldom in tail, it muſt either be by the act of the party, or operation of law; by the act of the party it cannot be, for the King cannot do it; by operation of law it cannot be; ſtatute law is not pretended, common law or cuſtom it cannot be by, for the ſame law is ſaid to be where a viſcount is made an earl, an earl a marquis, a marquis a duke, and yet at common law there was neither duke, marquis nor viſcount; for all theſe titles commenced from within time of memory in law: That of a duke begun not with us, ſaith ſir HENRY SPELMAN, *Gloſſa.* 233. until EDWARD the III's time, when the Black Prince was created

created duke of Cornwall. That of a viſcount with us, 18 HEN. VI. Rot. Pat. part 2. m. 2. by H. VI. Creation of JOHN BEAUMONT, viſcount Beaumont: That of a marquis is a diſtinct title of honour, ſays Mr SELDEN, *Tit. hon.* 359. 1 R. II. when he created ROBERT DE VERE, earl of Oxford, marquis of Dublin for his life. What man will doubt that the dukedom and marquiſate of Buckingham ſtand now well together, and may deſcend ſeverally if occaſion be? yet the one is a fee ſimple, and the other an entail.

4thly. Should this but be ſuffered, it would break a rule of law in point of deſcents, to the prejudice of the blood firſt ennobled; for it may fall out that an heir in tail of an earldom, may be no heir at all of the barony, or at leaſt very remote or collateral, when there is a true and lineal heir of the whole blood, to inherit the barony, which ſhall be defeated; as if an earl in tail that hath divers brothers, matries a baroneſs, and by her hath iſſue a ſon, who by the right of his mother hath the barony, his father dying, he is earl alſo; this earl marries and leaves a daughter; his uncle carries the earldom, but if the earldom attracts the barony, then he is the baron that is not of the blood; if not, the barony is ſeparated from the earldom.

5thly. If the earldom or greater title ſhould draw the leſſer, what is the reaſon that thoſe that have been firſt adorned with greater titles, have been created into leſſer? As 15 H. VI. m. 44. JOHN duke of Somerſet, was made by HEN. VI. earl of Kendal, with this clauſe in the patent, *nomen, ſtilum, titulum & honorem comitis de Kendal, ultra nomen ducis Somerſet.* Rot. cart. 15 EDW. IV. M. 12. 8. 13. EDWARD the fourth created his nephew, JOHN, ſon and heir of JOHN, duke of Suffolk, earl of Lincoln. Rot. cart. 12 EDW. IV. M. 11. 12. EDW. IV. created GEORGE, duke of Clarence, earl both of Salisbury and Warwick; by ſeveral patents this would have been but a poor buſineſs, to deſtroy them as ſoon as he had created them, for ſhould this poſition hold, as ſoon as ever theſe earldoms came to the dukes, they are extinct; ſo it would be a fruitleſs agitation.

6thly. What if the barony come to the earldom, inſtead of the earldom coming to the barony, as if a barony in fee deſcends upon an earl in tail, ſhall the barony ever after loſe its deſcendible quality, and be drowned and extinct, as if it deſcended *in mare mortuum?* yet the reaſon is ſtill the ſame, if the law makes the change, for the act of the party can make no change at all.

7thly. Some baronies in fact have outlaſted earldoms, yet it is a wild conſtruction to ſay they have been drowned in the earldom; Sir WILLIAM PAR being created baron Par of Kendal, and afterwards 36 HEN. VIII. created earl of Eſſex, and marquiſs of Northampton in tail, died without iſſue; ANNE his ſiſter married to WILLIAM HERBERT earl of Pembroke, and by her he enjoyed the barony of Par, though the earldom of Eſſex, and marquiſate of Northampton, were extinct.

8thly. Admit, the King ſhould not permit an earl, to uſe his title of earl, yet his barony remains; but if the barony ſhould be merged, by the acceſſion of the earldom, that likewiſe muſt be deſtroyed. By this means, ye put it into the power of the King, to take a peer out of the houſe of lords, by ſuſpending his earldom; for his barony follows of courſe: the earldom of Kent was ſuſpended by HEN. VIII. the heralds ſay for want of competent eſtate to maintain it; but by queen ELIZABETH 1571. was reſtored to REGINALD GREY, yet no man ever doubted but his barony of Haſtings remained, and he ſat by virtue of that from a female, in parliament, during his ſuſpenſion.

9thly. That is the difference taken, that if a nobility patrimonial be *conjuncta feodo*, it deſcends to whom the fee and lands deſcend; if it be *ſeparata a feodo*, it deſcends according to the cuſtom of the country; by the cuſtom of England, baronies deſcend to heirs females, as well as males; by this title the earl of Oxford had Sandford and Badleſmere; by this title the earl of Northumberland had Poynings, Brian and Fitz-Pain; by this title the earl of Derby had his title of Strange of Knockyn, and theſe only held by the continuance of that cuſtom, that allows them the ſtyle and title as deſcended from their anceſtors, who married the daughters and coheirs of thoſe baronies.

And now I make bold to come to the objections, that have been made.

Obj. 1. That an earl, though he hath 20 baronies, hath but one voice in parliament, neither ſhall he retain any more than five chaplains.

Anſ. There is a great difference between rights inherent in his perſon and his title, perſonal rights ſhall never be doubted, for *difficile eſt ut unus homo vicem duorum ſuſtineat*; can any man living apprehend that one and the ſame perſon ſhould vote to the ſame queſtion; content as an earl, and not content as a baron? this was to ſet the ſame man againſt himſelf, and to make war in his own breaſt, merely to ſupport his dignity. Can any fleſh living think, that a peer will pray one way as a baron, and another as an earl? this was to peg up his ſoul to the degree of his honour. By the ſame reaſon, admit a baron was made a knight of the garter, or warden of the cinque ports, he ſhall have but three chaplains, yet no man can ſay that the whole order is ſwallowed up in the other; yet in his diſtinct capacities he ſhall have more.

Obj. 2. That this baron ſhall only pay an earl's relief.

Anſ. That is a miſtake in fact; for reliefs are paid according to the grand charter, by the real *comitatus* or *baroniæ*, and their other poſſeſſions, but not with the leaſt relation to their titles of mere perſonal creations. Therefore Trin. 13 JAC. *ex part. rememb. theſaurar.* after the death of ROGER, earl of Rutland, FRANCIS, his brother and heir, for the baronies of Belvoir, Hamlake and Trusbut, paid ſeveral reliefs for what he had in poſſeſſion, but none for thoſe that were only titular.

Obj. 3. That *magis dignum trahit ad ſe minus dignum, licet minus dignum ſit antiquius*, and an earldom in tail being a dignity of greater worth &c.

Anſ. This rule holds in things of an undivided intereſt, as a box of writings ſhall go to the heir, with the deeds it contains that concerns the heir, and ſhall not go to the executors, as being the moſt worthy, though otherwiſe the box ſhould have gone to the executors; but yet this rule holds not in things of diſtinct intereſt, and titles, that one title ſhould draw another; as if a diſſeizor lets land to a diſſeizee for years or at will, the diſſeizee hath here two intereſts, the one as diſſeizee in that right, the other as leſſee to the diſſeizor, yet that ſhall never be drawn; by the ſame reaſon why may not an eſtate in tail, be drawn by a fee coming of the ſame land, to the ſame perſon? yet it is well known that an eſtate in fee, and an eſtate in tail, will ſtand together.

Obj. 4. Should a ſeparation be ſuffered, ancient earldoms ſhould loſe the plumes of their honours.

Anſ. I come not here to leſſen the greatneſs of any noble peer, within their walls, I come not to draw the leaſt from that honour that is adherent to any man, but as it is not my duty to detract from any man's greatneſs, I know it is none of your lordſhips deſires, to wear or plume themſelves with another man's titles, that were to adorn themſelves with another's robes, and ſubject his fortune to a continual and indefatigable claim; but however there have been great earls without any baronies at all, yet I never heard they thought the worſe of themſelves; the earl of Oxford had no baronies untill ROBERT DE VERE, the third earl of Oxford, married ISABEL, daughter and heir of HUGH, lord Bulbeck of Bulbeck Caſtle in Buckinghamſhire, and by her had the barony of Bulbeck.

Obj. 5. That the earldom uſually carries away the greateſt part of the poſſeſſions, and ſo would leave the barony poor, which would be a cauſe of degradation.

Anſ. I muſt confeſs when nobility falls to be weak in fortune, it makes a kind of diſproportion between honour and means; yet that the nobleneſs of the blood ſhould depend on the fortune of an eſtate is ſtrange, for that was to tie his honour to his purſe-ſtrings, and he that hath the moſt money by the ſame reaſon, *ex debito juſtitiæ* ought to be made a baron. The ſole precedent I have met withal of degradation for poverty is the 17 EDW. IV. Rot. Parl. N°. 16. of GEORGE NEVIL, duke of Bedford, but in the record the preamble of the act

act agrees not with the enacting part, for in the preamble it is ſaid the King had beſtowed great favours, and had great kindneſſes for this GEORGE NEVIL, and deſigned him for his daughter ELIZABETH, (who was after married to HEN. VII) and thereupon made him duke of Bedford, as appears in the very charter of his creation 9 EDW. IV. Rot. Parl. 13.—*Et in nobiliſſimum pignus filiam noſtram* ELIZABETHAM *in conjugem.*—But his father after this ſticking cloſe to HEN. VI. for this cauſe the King both ſlighted father and ſon; and this is the ſole degradation of a peer by parliament, for without parliament, ſays my lord COKE Inſt. 4. p. 355. no degradation of a peer can be. I lay no imputation on this act, as an act of parliament, yet your lordſhips are judges, how much this act of degradation may ſerve the purpoſe; but to anſwer this contingent objection, with a further contingent, it may ſo fall out, that the party that hath a title to this barony, may have larger poſſeſſion than the earl, what then?

Obj. 6. The King when he made a baron an earl, did not intend to multiply peers.

Anſ. The King's intentions are always guided by the rules of law, the law ſaith *eadem eſt mens regis quæ legis.* When HEN. VIII. created my lord Lovel a viſcount, to him *& hæredibus maſculis*, all men would have ſaid, it had been intended by the King an eſtate tail; nay had the King been asked the queſtion, he would have ſaid ſo, but the law ſaid his intentions were void. If you ſhould reſtrain the intentions to law, then it would be uncertain to expound patents, and the ſovereign would be tired with impertinent queſtions, and the ſubject vexed with an uncertain anſwer; but yet turn it on their ſide, 'twill never be ſaid the King by his creation of an earl, ever intended to do a wrong, and deprive another of his right, that was fixed upon him.

I come now to the precedents he hath cited.

They are of two ſorts, ſome where there are many daughters, others where but one a piece.

In the caſe of MICHAEL DE LA POLE, earl of Suffolk, the earls of Northumberland, Shrewsbury and Derby, theſe baronies muſt be in the King; for this is the difference, that local dignities may be divided; as the earldom of Cheſter in the caſe of SCOTUS 23 H. III. part. 18. but perſonal dignities as theſe are, they fall to the King; for as to them the rule is *dignitas non eſt diviſibilis* 3 HEN. III. T. præ. poſition 561. Their lordſhips themſelves may do what they pleaſe, but *judicandum eſt legibus non exemplis*: theſe precedents are good *media* or proofs of illuſtration, or confirmation, when they agree with expreſs law, but can be no proof to overthrow law, fixed on the other ſide. To H. FITZ-ALAN, earl of Arundel, that was a barony by tenure, for the iſſue male failing, one of the ſiſters and heirs of HUGH, the 5th earl of Arundel, was married to ſir JOHN FITZ-ALAN, lord of Clun, ſo he comes to that barony, as by the land, and having no iſſue male, PHILIP HOWARD, his daughter's ſon, ſucceeded.

The next are thoſe precedents, where there was but one daughter.

My lord of Kildare's caſe; FITZ-GERALD, earl of Kildare in tail, in Ireland, and baron of Offaly in fee dyed, and his daughter and heir married to DIGBY, who, in the right of his wife, ſued for the barony, but king JAMES ſent her a command to deſiſt, as being engaged in a ſuit againſt law, and made her a baroneſs.

Anſ. Admit ſhe did deſiſt, this muſt only be look'd upon as a voluntary ſubmiſſion and acquieſcence, in the command of our Sovereign, not a renuntiation of the right of the ſubject.

For will it ever be imagined, that which the law of England takes not ſo much as notice of for an honour and dignity (for an earl in Ireland, is but an eſquire in England COKE Inſt. 2. 669.) ſhould drown a barony in fee in England, which is one of the higheſt degrees of honour we have here?

2dly.

2dly. The case of HUMPHREY FITZ-ALAN earl of Arundel, the 7th, whose sole daughter and heir married to BOTELER, earl of Ormond and Wiltshire.

Ans. Here the heralds differ; MILLS he saith one thing, VINCENT upon York fol. 312. saith this HUMPHREY FITZ-ALAN died without issue; till they agree I must beg your lordships leave to deny the reason.

But if precedents be of importance, one precedent upon debate is worth twenty passed in silence; a thing may be passed that way without much observation, and we have in law precedents that go under the name, but a matter can never be resolved without a debate; my lord COKE Inst. 2. 594. hath these words, this is to be observed that the greater dignity doth never drown the lesser dignity, but both stand together in one person; as (says he) if a baron be created an earl, yet the dignity of a baron remains still, and in the margin cites m. 9. ED. I. B. Rot. 63. My lord COKE Inst. 1. 165. A. cites my lord Ross's case to be so adjudged in point by all the judges of England.

The 3d is a precedent before your lordships, debated and resolved by five judges, four of them men of as great learning and integrity, as were in that learned age, my lord chief justice CREW, my lord chief baron WALTER, DODERIDGE, YELVERTON, TREVOR. Upon this resolution the lords passed a judgment, that these honours were in the King, and this judgment the King approved of, 'twas 1 CAR. I. in the case of my lord of Oxford; JOHN DE VERE, earl of Oxford, being seized as of fee tail, of the earldom of Oxford, and of fee, the baronies of Bulbeck, Sandford and Badlesmere 18 HEN. VIII. died without issue of his body, leaving only three sisters as heirs general. 1 CAR. I. ROBERT DE WILLOUGHBY DE ERESBY, by that name petitioned for the baronies of Bulbeck, Sandford and Badlesmere, and likewise would have the earldom of Oxford, pretending it was not a fee tail, but a fee simple; this was referred to the judges, who having heard council on both sides, and long consider'd of it, 20 Mart. 1625. the judges came into the house, and say only, having considered, of the titles of the competitors to the earldom of Oxford, the baronies of Bulbeck, Sandford and Badlesmere, then gave their resolution; that the honour of the earldom of Oxford was entailed upon AUBREY DE VERE, and his heirs males, by the parliament 16 R. II. and that an estate tail, to the heir male, was thereby created, and that the earldom of right belongs to AUBREY DE VERE, one of the said competitors, by virtue of the tail; but as touching the baronies of Bulbeck, Sandford and Badlesmere, they were of opinion, that the same descended to the general heirs of JOHN, the 14th earl of Oxford, who had issue JOHN, the 15th earl of Oxford, and three daughters, which JOHN, the 15th earl of Oxford, dying without issue, those baronies descended upon the daughters and heirs; but those dignities being entire, and not divisible, they became uncapable of the same, otherwise than by gift from the crown.

Ante. p. 175.

22d of March, after, it was accordingly resolved by the lords, with the judges opinions.—There need no comment on this resolution, for the very order it self shews it, and it was enjoyed accordingly.

The next is that which goes under the name of the earl of Kent's case 16 CAR. I. EDMUND GREY had issue GEORGE, earl of Kent, who had two wives, the one was ANNE, daughter of the earl RIVERS, and by her had issue RICHARD, who succeeded him in the earldom, and died without issue; the other wife was CATHERINE, daughter of the earl of Pembroke, and by her he had issue sir HENRY GREY and ANTHONY GREY; sir HENRY had issue HENRY, who had issue REGINALD, and HENRY, who both died sans issue, and CHARLES, who had issue HENRY, and SUSAN, married to sir MICHAEL LONGUEVILE, knight; HENRY succeeded CHARLES his father, and died without issue; the earldom went by the entail to ANTHONY, son of GEORGE, son of ANTHONY, youngest son of GEORGE by the second venter, and CHARLES LONGUEVILE, heir of sir MICHAEL LONGUEVILE, and the lady SUSAN, claimed to be lord GREY.

Vide Pedigree Ante p. 197.

Now if the earldom had swallowed up the barony, how was it possible the issue of LONGUEVILE should claim and enjoy the barony, and yet the earldom

of Kent be in being; for the judges could never come to debate the *poſſeſſio fratris* as to the barony, if they had judged the earldom had extinguiſhed the barony, and no need under heaven to put that reſolution in the order, which was admitted on all ſides. I have done.

My client hath this good fortune attending him in this cauſe, to find out theſe authorities thus freſh in your lordſhips memories, and not to build his caſe on old judgments, raked up or forced or ſtrained by any conſtructions or inferences, but what is of it ſelf natural, and attended with all the clearneſs imaginable: My lord BACON hath an expreſſion, That it is a reverend thing to ſee an ancient caſtle or building not in decay, how much more to behold an ancient noble family, which hath ſtood againſt the waves and weather of time, for this is the act of time?

My lords, to behold the Fitzwalters in the houſe in EDW. I. time, and ſee them out in king CHARLES II. I know is only your lordſhips reſolution to try the pedigree, not to diveſt the title, ſo that when they come in again it may be with the greater luſtre, and that they may enjoy their privileges with the greater ſecurity.

I beg your lordſhips pardon for my ſelf, and your judgment for BENJAMIN MILDMAY your petitioner, that he may be veſted in his ancient right of baron Fitzwalter.

This argument was given me by Mr. OFFLEY himſelf.

Lunæ 27 *April.* 1668. *poſt meridiem.*

After hearing counſel this day at the bar on the behalf of BENJAMIN MILDMAY, and ROBERT CHEEKE eſqs; upon their reſpective claims to the title of the barony of Fitzwalter to the points in law, whether a barony in fee ſhall deſcend to the half blood? And whether a barony in fee may be merged in an earldom in tail?

Upon conſideration had thereof, it is ordered that the further conſideration of this buſineſs be adjourned till Wedneſday morning next at ten a-clock, at which time Mr. attorney-general, or ſome other counſel for his Majeſty ſhall be heard on his Majeſty's behalf in relation to the ſaid title of the barony of Fitzwalter, if they think fit.

Mercurij 29 *Aprilis*, 1668.

Ordered, That Saturday next be appointed to hear what Mr. attorney-general, or any other counſel on his Majeſty's behalf, ſhall think fit concerning the title to the barony of Fitzwalter, and in caſe no counſel ſhall then deſire to be heard, this houſe will proceed to give judgment upon what is already before them.

But the parliament being firſt adjourned, and then prorogued, nothing was done this ſeſſions in this Buſineſs.

At the court of Whitehall the 19th of January 1669.

Preſent

The King's moſt excellent Majeſty.

His royal highneſs the duke of York.	Earl of Craven.
His highneſs prince RUPERT.	Lord biſhop of London.
Lord archbiſhop of Canterbury.	Lord Newport.
Lord Keeper.	Lord Hatton.
Earl of Oſſory.	Lord Holles.
Lord Chamberlain.	Lord Aſhley.
Earl of Oxford.	Mr. Treaſurer.
Earl of Bridgewater.	Mr. Vicechamberlain.
Earl of Sandwich.	Mr. Secretary TREVOR.
Earl of Bath.	Sir JOHN DUNCOMB.
Earl of Carliſle.	

WHEREAS BENJAMIN MILDMAY eſq; having by his petition read at the board, the 29th of December laſt paſt ſhewn, That his brother HENRY MILDMAY deceaſed did, in his life time, by his petition to his Majeſty, ſet forth his title to the barony of Fitzwalter, and being a minor, moſt humbly prayed his Majeſty's protection againſt the pretence and claim of ROBERT CHEEKE, eſq; to the ſaid barony, to which he was heir at law; and that nothing might be done to the diſinheriſon of his title thereunto; but that he might be heard concerning the ſame. After which the ſaid ROBERT CHEEKE, by his petition likewiſe, ſetting forth his claim and title to the ſaid barony; both petitions his Majeſty in Auguſt 1660. was pleaſed to refer to the conſideration of the lords then aſſembled in parliament, to hear the pretenſions of the ſaid parties, and to certify what they conceive juſt and fit to be done therein; but the ſaid HENRY, ſhortly after dying, nothing was done thereupon. After which, upon the petition of the ſaid BENJAMIN MILDMAY, the now petitioner, brother and heir of the ſaid HENRY, his Majeſty did, by another gracious reference of the 21st of November, in the nineteenth year of his reign, refer the ſame again to the right honourable the houſe of peers, to take the petitioners claim and title into conſideration; which they accordingly did; and having heard counſel on both ſides at the bar, were ready to give their judgments, but weightier affairs interpoſing, and then an adjournment, and after by a prorogation of the parliament, prevented any determination therein; the petitioner by his late petition humbly prayed his Majeſty would be pleaſed again to refer the ſame to the right honourable the houſe of peers, to proceed therein according to honour and juſtice: Whereupon his Majeſty being deſirous to ſatisfy himſelf in hearing the pretenſions to the ſaid barony, was pleaſed to order in council that this cauſe ſhould be heard at this board on Wedneſday the 19th of January following, when as well the petitioner as Mr. CHEEKE and all perſons concerned were ordered to attend with counſel, if they thought fit; after which his Majeſty likewiſe in council the 14th of January, to the end he might receive full ſatisfaction in point of law, of the ſeveral pretenſions to the ſaid barony, ordered, That the right honourable ſir JOHN KEELING, knight, lord chief-juſtice of the King's bench, ſir JOHN VAUGHAN, knight, lord chief-juſtice of the common pleas, and ſir MATTHEW HALE, knight, lord chief baron of the exchequer, together with his Majeſty's chief ſergeant at law, his attorney and ſollicitor general, and other his Majeſty's learned counſel, ſhould attend his Majeſty the ſaid 19th of January: Accordingly his Majeſty being in council that day, the ſaid judges and his Majeſty's learned counſel were called in, as likewiſe the petitioner and his counſel, and counſel on the behalf of ROBERT CHEEKE, eſq; when the petition of the ſaid BENJAMIN MILDMAY was again read, wherein (beſides the matters and proceedings upon his

title and claim before recited) he deduced his deſcent and pedigree from ROBERT FITZWALTER, ſummoned to ſeveral parliaments, in 23 EDW. I, and after, whoſe heir-male and deſcendents for five deſcents were all in the ſucceeding parliaments ſummoned barons Fitzwalter, until ELIZABETH, ſole daughter and heir to WALTER, lord Fitzwalter, laſt heir male of that ſirname, married to ſir JOHN RATCLIFFE, whoſe ſon JOHN was ſummoned to parliament by the title of lord Fitzwalter in the firſt of HENRY VII. whoſe ſon ROBERT, lord Fitzwalter (created viſcount Fitzwalter 17 HENRY VIII. and 24 HENRY VIII. earl of Suſſex) had two ſons, HENRY, earl of Suſſex, and ſir HUMPHREY RATCLIFFE, knight. HENRY had two wives, by the firſt he had THOMAS, earl of Suſſex, who died without iſſue, and HENRY, earl of Suſſex, who was father of ROBERT, earl of Suſſex, who died alſo without iſſue, and the lady FRANCES, wife of ſir THOMAS MILDMAY, knight, great grandfather of the petitioner. Sir HUMPHREY RATCLIFFE was ſecond ſon of the firſt earl; father of EDWARD, earl of Suſſex, after the death of ROBERT, laſt earl of Suſſex in the direct line, and of ſeveral daughters, whereof FRANCES was wife of HENRY CHEEKE, anceſtor of ROBERT CHEEKE, the other pretender to the ſaid barony: The which deſcent being more particularly opened by the petitioner's counſel, and alledged that the right of ſucceſſion to the ſaid barony was in the ſaid BENJAMIN MILDMAY, the petitioner, as couſin and heir general unto ROBERT, firſt lord Fitzwalter in the direct line, as being a barony by writ, and they had proof ready, and offered to prove the pedigree, which as well by his Majeſty's counſel, as of the ſaid ROBERT CHEEKE's, was admitted, as opened, but the counſel of the ſaid ROBERT CHEEKE affirmed, That the ſame was a barony by tenure, and ought to go along with the land; which the counſel of the petitioner denied, and offered to argue upon the ſame: Upon which both parties being ordered to withdraw, the nature of a barony by tenure being diſcourſed, it was found to have been diſcontinued for many ages, and not in being, and ſo not fit to be revived, or to admit any pretence of right of ſucceſſion thereupon: And that the pretence of a barony by tenure, being declared (for weighty reaſons) not to be inſiſted on, then the counſel on either ſide being called in, the counſel of ROBERT CHEEKE inſiſted that the barony was merged and extinct in the earldom, by coming to EDWARD, laſt earl of Suſſex, who died without iſſue: To diſprove which, the counſel on the petitioner's behalf, producing the report and opinion of the judges made to the right honourable houſe of peers, March 20th 1625. in the caſe of the earl of Oxford and the lord Willoughby, and the concurrence of the houſe of peers therewith; and the record of this being read at this board, and the counſel of the ſaid ROBERT CHEEKE raiſed the queſtion, whether the half blood was any impediment to the deſcent of a dignity; but the petitioner's counſel produced the order of the houſe of peers, purſuant to the reſolution of the judges in the caſe of CHARLES LONGUEVILLE, eſq; for the barony of Grey, to diſprove the ſame by law.

And the ſame queſtion being put to the judges beforenamed, and they all unanimouſly agreeing that the half blood was no impediment to the deſcent of a dignity to an heir general, and that if a baron in fee ſimple be made an earl, the barony will deſcend to the heir general, whether the earldom continue or be extinct, with which opinion and reſolution his Majeſty being fully ſatisfied *:

It

* Sir HENRY MILDMAY, of Mulſho in com. Eſſex, knight, ſon and heir to ſir THOMAS MILDMAY, knight, by the lady FRANCES, his wife, daughter to HENRY, Earl of Suſſex (by ANNE, his ſecond wife, daughter of ſir PHILIP CALTHORP, knight) couſin and heir of the half blood to ROBERT, earl of Suſſex, who died *anno* 1629 without iſſue, laid claim to the title of lord Fitzwalter, ſhortly after the ſitting of that unhappy long parliament, which began at Weſtminſter November 3. 1640. (16 CAR. I.) by reaſon of his deſcent in blood from ELIZABETH, the daughter and ſole heir to WALTER, lord Fitzwalter, who died without iſſue male in 10 H. VI.

But the troubles ſhortly coming on, which begot a flame of war, (as is very well known) nothing was done therein, till after the happy reſtoration of our preſent ſovereign King CHARLES II. That HENRY MILDMAY, eſq; grandſon and next heir to the ſaid ſir HENRY MILDMAY, knight, by petition to his Majeſty laid claim to this title of lord Fitzwalter; and ſince that BENJAMIN, his brother and heir; (the ſaid HENRY dying ſoon after) which petition being referred to the conſideration of the houſe of peers in parliament, after much oppoſition thereto by ROBERT CHEEKE, eſq; ſon of HENRY CHEEKE, by FRANCES his wife, one of the ſiſters and heirs of the whole blood

It is ordered, by his Majeſty in council, That the petitioner is admitted humbly to addreſs himſelf to his Majeſty for his writ to ſit in the houſe of peers, as baron Fitzwalter: Nevertheleſs it was further declared, That where the King is pleaſed by writ to ſummon an earl's eldeſt ſon to parliament, to ſit there in the place of his father's barony, that this caſe is wholly different from the former.

A true copy.

RICHARD COLYNGE.

Lunæ 14 *die Februarij*, 1669.

The lord keeper ſignified to the houſe that he had delivered to him a writ of ſummons dated Feb. 10. *anno viceſimo ſecundo domini regis* CAROLI *ſecundi*, for calling BENJAMIN MILDMAY, to ſit as lord Fitzwalter in parliament, of which he thought fit to acquaint their lordſhips, *&c.* The houſe cauſed the ſaid writ to be read;

The tenor whereof follows,

CAROLUS *ſecundus, Dei gratia, Angliæ, Scotiæ, Franciæ, & Hiberniæ Rex, fidei defenſor,* &c. *prædilecto & fideli noſtro* BENJAMINO MILDMAY *de Fitzwalter, chivalier, ſalutem. Cum nuper de aviſamento & aſſenſu concilij noſtri pro quibuſdam arduis & urgentibus negotiis, nos ſtatum & defenſionem regni noſtri Angliæ & eccleſiæ anglicanæ concernen. parliamentum noſtrum apud civitatem noſtram Weſtm. octavo die Maij anno regni noſtri tertio decimo teneri ordinabimus; & ibidem cum magnatibus & proceribus dicti regni noſtri colloquium habere & tractat. Quod quidem parliamentum tunc & ibidem inceptum fuerat, & ab eodem octavo die Maij uſque decimum nonum diem Maij anno regni noſtri decimo quarto continuatum fuerat, & eodem decimo nono die Maij idem parliamentum noſtrum uſque decimum octavum diem Februarij, anno Regni noſtri decimo quinto prorogatum fuerat; & poſtea per ſeparales alias prorogationes parliamentum prædictum uſque decimum quartum diem inſtantis Februarij continuatum fuerat, tunc tenendum, & proſequendum, vobis, ſub fide & ligeantia quibus nobis tenemini firmiter injungendo mandamus, quod conſideratis dictorum negotiorum arduitate quacumque dicto decimo quarto die inſtantis Februarij ad parliamentum noſtrum prædictum perſonaliter interſitis nobiſcum, ac cum prælatis, magnatibus, & proceribus prædictis, ſuper dictis negotiis tractaturis, veſtrumque concilium impenſur'. Et hoc, ſicut nos, & honorem noſtrum, ac ſalvationem, & defenſionem regni & eccleſiæ prædictæ, expeditionemque dictorum negotiorum diligitis, nullatenus omittatis. Teſte meipſo apud Weſtm. decimo die Februarij anno regni noſtri viceſimo ſecundo.*

BARKER.

Then there being ſome doubt where his due place was, after ſome conſideration thereof the houſe appointed the lord great chamberlain of England to bring in his lordſhip and ſhew him the place of the loweſt baron, and his lordſhip ſitting there, it was moved on his behalf that his now ſitting in that place might be no prejudice to his right and claim to a higher place, and it was deſired the houſe would pleaſe to appoint ſome way for him to be heard to make out his claim and right to his ancient place.

blood to EDWARD, earl of Suſſex, who deceaſed without iſſue: One of his objections being that of the half blood in MILDMAY; and the other, that the barony or title of lord Fitzwalter was merged and extinct with the earldom. It was upon full debate and mature conſideration had therein, reſolved upon the queſtion, that the half blood could not be any impediment in the caſe of a dignity. And that tho' a baron in fee ſimple be made an earl, the barony ſhall deſcend to the heir general, whether the earldom do continue, or be extinct. DUGDALE's *baron.* vol. III. p. 288.

Whereas BENJAMIN MILDMAY, lord Fitzwalter, by virtue of his Majeſty's writ of ſummons to parliament dated the 10th day of this inſtant February, was this day admitted into this houſe and placed at the lower end of the baron's bench, and the houſe being immediately moved that the ſaid lord Fitzwalter's ſitting where now he doth may be with a *ſalvo jure* to ſuch right as his lordſhip ſhall be able to make out to any higher place in the houſe of peers; it is thereupon ordered, by the lords ſpiritual and temporal in parliament aſſembled, that it be referred to the lords committees appointed to take conſideration of the orders and cuſtoms of this houſe, and privilege of the parliament and peers of this kingdom, and lords of parliament, to hear and conſider of what the ſaid lord Fitzwalter, or his counſel, ſhall offer concerning his place in the houſe of peers, and make report thereof unto the houſe.

Martis 8 *Martij*, 1669.

The earl of Eſſex reported that the committee for privileges have heard the counſel of lord Fitzwalter, who hath claimed precedency in parliament by virtue of a writ of ſummons bearing date the 31ſt of Auguſt in the 23d year of EDWARD I, and produced ſeveral ſworn copies of records to prove his ſaid claim; and it being demanded what place in the houſe of peers he pretended unto, the counſel anſwered, That he claimed precedence of all barons now ſitting as barons, particularly of the lord Abergavenny, and alledged a determination in HENRY VIII.'s time, whereby he was placed next below the lord Clifford.

He ſaid he was alſo, by order of the committee, to acquaint their lordſhips, that the earl of Berks, in behalf of the duke of Norfolk as lord Mowbray, and his lordſhip on the behalf of the earl of Northumberland as lord Percy, and the earl of Norwich on behalf of the lord Abergavenny now under age, the lord Audley and the lord Berkley for themſelves, did deſire to be heard what they could object againſt the records, and this was deſired more particularly by the lord Berkley: Upon conſideration had thereof, It is ordered, by the lords ſpiritual and temporal in parliament aſſembled, that the counſel of the lord Fitzwalter ſhall be heard at the bar of this houſe, to ſet forth his lordſhip's claim, on Tueſday the 22d of this inſtant March, at ten of the clock in the forenoon, and that ſuch lords as ſhall oppoſe the ſaid claim, may be then heard in the houſe, and ſuch further time given them as the houſe ſhall think fit.

Jovis 24 *Martij*, 1669.

Ordered, by the lords ſpiritual and temporal in parliament aſſembled, That on the firſt Wedneſday of the next ſitting of the parliament after Midſummer next, the trial of the lord Fitzwalter's cauſe, upon the claim of his precedency to all barons now ſitting as barons, ſhall be heard by counſel at this bar, at which time all ſuch lords as ſhall oppoſe his ſaid claim may be heard in this houſe.

Jovis 27 *Octobris*, 1670.

Ordered, That the cauſe of the lord Fitzwalter, upon the claim of his precedency to all barons now ſitting as barons, ſhall be heard by counſel at the bar of this houſe, on Friday the 4th day of November next, at ten of the clock in the forenoon, at which time all ſuch lords as ſhall oppoſe his ſaid claim ſhall be heard alſo.

Veneris 4 *die Novembris*, 1670.

This day the counſel of BENJAMIN, lord Fitzwalter, was heard, to make good his claim of his precedency to all perſons now ſitting as barons; to that purpoſe theſe records following were urged by the counſel, *viz.*

ROBERT, baron Fitzwalter, was ſummoned to parliament by writ *clauſ.* roll 23 EDW. I. *memb.* 9. *dorſo.*

ROBERT, baron Fitzwalter, was ſummoned to parliament, *clauſ.* 19 EDW. II. *memb.* 27. *dorſo.*

JOHN, baron Fitzwalter, was ſummoned to parliament, *clauſ.* 15 EDW. III. *memb.* 37. *dorſo.*

GUALTER, baron Fitzwalter, was ſummoned to parliament, *clauſ.* 43 EDW. III. *memb.* 24. *dorſo.*

GUALTER, baron Fitzwalter, was ſummoned to parliament, *clauſ.* 14 RIC. II. *memb.* 42. *dorſo.*

GUALTER, baron Fitzwalter, was ſummoned to parliament, *clauſ.* 7 HEN. VI. *memb.* 2. *dorſo.*

Then the counſel for GEORGE, lord Berkley of Berkley, deſired to be heard on his lordſhip's behalf, to oppoſe the claim of the lord Fitzwalter; thereupon it is ordered, by the lords ſpiritual and temporal in parliament aſſembled, that the counſel of the ſaid GEORGE, lord Berkley, or any other lord, ſhall be heard on Thurſday the 10th of this inſtant November, to oppoſe the ſaid claim of the lord Fitzwalter.

Jovis 10 *die Novembris*, 1670.

The lords ſpiritual and temporal in parliament aſſembled, taking into conſideration this day the lord Fitzwalter's claim of precedency in this houſe, to all barons now ſitting as barons: The lord keeper, by command of the lords, demanded of the lord Fitzwalter, whether his lordſhip would conſent to ſit as the laſt baron of the reign of King EDWARD I. with a ſaving of his own right, and alſo ſaving the right of all other barons; to which the ſaid lord Fitzwalter declared his conſent: upon which conſent given, this houſe did adjudge that his lordſhip be placed the laſt baron of the reign of King EDWARD I. accordingly.

Then the lord keeper (by the directions of this houſe) ſignified to the lord Fitzwalter, that his lordſhip ſhould ſit as the laſt baron of the reign of King EDWARD I. with a ſaving of his own right, and ſaving the right of all other barons; and accordingly the lord Fitzwalter took the ſaid place immediately.

The Barony of *CLIFTON* of *Leighton Bromſwold.*

January 8. 1673.

THE houſe of peers, upon reading the petition of CATHERINE, lady O BRIEN, on behalf of herſelf and DONATUS O BRIEN, her ſon, claiming a right to the barony of Leighton Bromſwold, in the county of Huntington: as alſo, his Majeſty's reference thereof to this houſe, and of the report of his Majeſty's late attorney general, now lord keeper of the great ſeal, concerning the ſaid barony, annexed to the ſaid petition; Ordered &c. to be referred to the committee of privileges.

January 12. 1673.

Report from the committee, that the ſaid petition appearing to have a defect in it; it is their lordſhips deſire, by the directions of this houſe, that the lady CATHERINE O BRIEN have leave to withdraw and amend the ſame.

January 16. 1673.

The committee report, that upon examination of the buſineſs referred to their lordſhips, concerning the claim made by CATHERINE, lady O BRIEN, on behalf of herſelf, and DONATUS O BRIEN, her ſon, to the barony of Leighton Bromſwold, their lordſhips do find that JERVAS, lord Clifton, was ſummoned by writ to parliament, 6 JAC. I. by the title of lord Clifton of Leighton Bromſwold; ſo as the barony being a fee ſimple ought to deſcend from the ſaid lord Clifton, upon his heirs, and that the lady CATHERINE O BRIEN, the petitioner, being the heir gradually and lineally deſcended from the ſaid lord Clifton, the barony doth of right deſcend to her and her heirs. Hereupon the houſe made the enſuing order.

Upon report made this day by the earl of Berks, from the lords committee for privileges, concerning the claim made by CATHERINE, lady O BRIEN, &c. it was ordered, &c. that this houſe will hear his Majeſty's counſel learned in the laws, viz. Mr. ſerjeant MAYNARD, Mr. attorney general, and Mr. ſollicitor general, on Tueſday next, at ten of the clock in the forenoon, upon the ſaid claim, whereof the ſaid lady O BRIEN is to cauſe timely notice to be given to his Majeſty's ſaid counſel, to the end they may be ready accordingly; at which time ſhe may likewiſe attend with her counſel.

January 20. 1673.

Upon the conſideration had of what had been offered at the bar, by his Majeſty's learned counſel, as alſo the counſel of the lady O BRIEN, &c. It is order'd, &c. that the judges preſent this day, ſhall be attended by the lady O BRIEN's agent, with her petition and claim, the writ of ſummons to parliament, and the report of his Majeſty's late attorney general, now lord keeper, made in that caſe, whereon the ſaid judges are to give their opinions, the 26th inſtant.

January 26. 1673.

Adjourn'd to the 31ſt of *January*.

February

February 7. 1673.

The lord chief juſtice of the King's bench, lord chief juſtice of the Common pleas, chief baron, baron TURNER, baron LITTLETON, juſtice ATKINS, juſtice ELLIS, and baron THURLAND, were unanimous in their opinions.

That taking the caſe in fact, to be as his Majeſty's attorney general reported it to be, and as it ſtands tranſmitted to this houſe, they find it to be thus, as to this lady's claim of the ſaid barony;

That ſir JERVAS CLIFTON was ſummoned to parliament by the name of JERVAS CLIFTON, of Leighton Bromſwold, by writ, dated July 9. 9 JAC. I. &c.

That accordingly he did come and ſit in parliament, as one of the peers of England.

That he died 16 JAC. I. leaving iſſue behind him CATHERINE, his ſole daughter and heir, who married to the lord Aubigny, afterwards duke of Lenox.

That the ſaid duke, 17 JAC. I. was, by letters patents, created baron Leighton of Leighton Bromſwold in the county of Huntington, to him and the heirs male of his body, whereof none are now living.

That the petitioner is lineally deſcended from him, and is his heir (by the ſaid report) and as ſuch now claims the barony of Clifton.

All which being admitted to be true, they are of opinion,

Firſt, That the ſaid JERVAS, by virtue of the ſaid writ or ſummons, and his ſitting in parliament accordingly, was a peer and baron of this kingdom, and his blood thereby ennobled.

Secondly, That his ſaid honour deſcended from him to CATHERINE, his ſole daughter and heir, and ſucceſſively after ſeveral deſcents to the petitioner as lineal heir to the ſaid lord Clifton.

Thirdly, That therefore the petitioner is well entitled to the ſaid dignity.

Upon conſideration had by this houſe &c. It is reſolved by the lords ſpiritual and temporal in parliament aſſembled, that the ſaid CATHERINE, lady O BRIEN, hath right to the barony of Clifton.

Which barony is now in her grandſon the preſent earl of Darnley, ſee the peerage of England, Octavo edition 1733, Page 199. among the barons.

Viſcount

Viſcount *PURBECK's* Caſe.

At the court at Whitehall 20. Sept. 1660.

WHEREAS it was there repreſented to his Majeſty in council that ROBERT VILLERS, alias D'ANVERS, had humbly deſired, that he might ſurrender and reſign unto his Majeſty the title and honour of viſcount Purbeck, and all other his honours, and titles, as well in poſſeſſion as in remainder: It was thereupon ordered, by his Majeſty in council, that he ſhould proceed to ſurrender all his ſaid honours unto his Majeſty, by levying a fine, or other conveyance of the ſame accordingly, in due form of law.

Some few years after, this buſineſs was again revived, and upon a petition, the queſtion was in the houſe of lords, Whether the dignity of a viſcount could be ſurrender'd to the King by a fine? And it was argued at the bar in June 1678. by three counſel for the petitioner, and by ſir WILLIAM JONES attorney general for the King.

It was urged on behalf of the petitioner, That a dignity cannot be ſurrendred to the crown, and that for theſe reaſons*;

1. It is a perſonal dignity annexed to the blood, and ſo inſeparable and immoveable, (ſee RATCLIFF's caſe 5 Rep. p. 57. RUTLAND's caſe 6 Rep. 53.) that it cannot be either transferred to any other perſon, or ſurrendred to the crown; it can neither move forward nor backward, but only downward to poſterity; and nothing but a deficiency or a corruption of the blood can hinder the deſcent, as if the anceſtor be attainted of treaſon or felony, &c. For in that caſe, the heir conveying no inheritable blood, cannot make any claim to that which is annexed to the inheritable blood; and beſides, there is a tacit condition of forfeiture annexed to thoſe dignities, by the breach of which condition the dignity is determined; but by the act of the party there can be no determination of it, unleſs there be an attainder which corrupts the blood: and he took a difference between ancient honours and dignities which were feodary and officiary (as earl marſhal of England) which have a relation to an office or land, for ſuch are transferrable over; and ſuch dignities as are only perſonal, inherent in the blood, and only ſavour *quaſi* of the reality, of which no fine can be levied, as 'tis of an annuity to a man and his heirs, no fine can be levied.

2. A dignity was neither ſubject to a condition at the common law, nor intailable by the ſtatute *de donis*, *&c.* nor barrable by the ſtatute of fines: indeed, in NEVIL's caſe ſomething which favours of the contrary opinion is ſaid; but the queſtion there was, whether 'twas forfeitable by treaſon? and therefore the preſent queſtion is very foreign to the matter there debated. A dignity differs from other inheritances, being an honour perſonal affixed to the blood, cannot be forfeited by a non-performance of a condition, except that tacit condition in law, and conſequently cannot be intailed; and tho' the title of a viſcount be of a place, yet it is only titular, for it is often taken from the ſirnames of families.

3. The title of viſcount, *&c.* is not ſo much a private intereſt as a publick

* From Snowden's caſe in parliament p. 2, 3, 4.

right, for peers are born counſellors of ſtate, and one part of a ſenatory body, and therefore cannot be renounced without the conſent of all thoſe who have intereſt in it; they cannot without the conſent of the whole body, whereof they are ſo conſiderable members, cut themſelves off from the body, and ſo the objection of *quilibet poteſt jari ſuo renuntiare* is eaſily anſwered.

Twas further argued on the ſame ſide, That

1. An honour goes not according to the rules of the common law, nor is it governable by them, it is not therefore pertinent to argue from thoſe rules which hold in caſes of other inheritances, for a dignity deſcends to the half-blood, there is no coparcinerſhip of it, but the eldeſt takes the whole; a fee-ſimple will go to a nobleman without the word (heirs) 1 Inſt. 27. It differs from eſtates in land in the intrinſick matter, as well as the manner of the limitation; becauſe it is given for two reaſons, for counſel and defence; and it is a civil intereſt, appointed by the civil conſtitution of the realm, which goes with the blood, and is inherent in the blood, inſomuch that it is agreed on all hands, that it can't be transferred to a ſtranger; and till NEVIL's caſe, 'twas doubted whether forfeitable for treaſon; if a lord die, his ſon ſhall be introduced without the ceremony uſual at the firſt creation; a peer's eldeſt ſon, and all minors, ſit behind the chair of ſtate, to prepare them for the ſitting in the houſe as members, and becauſe they have ſome title to the honour they are called *nobiles nati*, for the firſt time they fetch breath they have nobility in them: ſo that he that ſurrenders by fine, muſt not only extinguiſh his eſtate in the honour, but alſo the nobility of his blood.

2. Every lord is not only a lord for himſelf, but alſo hath a right of peerage, and is a peer of the realm, and therefore a peer for every one of the houſe, and therefore hath the privilege to demand his writ *ex debito juſtitiæ*, and is to be tried by his peers in capital crimes; and that appears farther from a matter which happened in this houſe, 16 CAR. II. There was an order mentioning the biſhops to be lords of parliament, not peers; at which the lords wondering, ordered a committee to examine the reaſon of it; which proves that lord is not ſo high nor inclusive as peers: ſo that if the fine have any operation, it takes away not only his right, but alſo the right of the houſe of lords.

3. The trial of baron or no baron upon iſſue in any court of judicature is by the records of parliament; but if a fine may be levied in the Common pleas, the trial is drawn *ad aliud examen*, and muſt then be by the records of that court. The clerk of the parliament always certifies if he be a baron, becauſe he hath the record before him; but he cannot certify he is no baron, becauſe he hath not the record thereof before him.

4. No fine can be levied of a thing perſonal, as an annuity to a man and his (heirs), but a dignity is a thing perſonal; and ſo he took notice of the difference betwixt the honours of peerage, which are perſonal, and the honours that are feodary and officiary, which have reference to an office or land.

5. He did argue *ab inconvenienti* that this opinion can be no inconveniency to the crown; but the contrary makes nobility a meer pageantry, by putting it into the hands of a weak and angry father, to diſpoſſeſs an hopeful ſon of that which is his birthright: The titles of eſquire and gentleman are drowned in the greater dignity of that of a peer, and when the greater are gone, the other muſt go with it: And then from being a nobleman to day, he and the reſt of his family muſt be below all nobility, and be called ycoman or goodman VILLERS to morrow, which may bring great confuſion to a noble family and all its relatives; and ſurely this houſe will not put ſuch a publick diſreſpect on ſuch a

family, by agreeing to ſo unjuſt an act of one man. And that which was moſt relied upon, was a reſolution of this houſe in STAFFORD's caſe, *anno* 1640, which no man without indecency can queſtion; it paſſed not *ſub ſilentio* or *obiter*, but upon debate; neither could it be any way invalid upon account of the times, for it was in the infancy of that parliament, and that wherein a peer's caſe who ſits now in this houſe, was judicially before them; and therefore there is no reaſon to ſhake that judgment more than any other judgment of that time. My lord COKE in his 4 Inſt. chapt. of Ireland, is of opinion that honours cannot be extinguiſhed but by act of parliament. Then as to the precedents that have been urged on the other ſide, there are none directly to the point; for as to NEVIL's caſe, there are very few caſes cited there aright, and are not to be looked upon as law. The caſe of my lord of Northumberland in 3 & 4 PHIL. & MAR. was by way of creation, and ſo was the caſe of DUDLEY. And DUGDALE in his baronage of England, p. 270. gives an account of it; and the reſt of the precedents are above two hundred years old, which paſſed *ſub ſilentio*, and are not to be vouched unleſs they were diſputed. The firſt is BIGOD's, who in the time of EDW. I. ſurrendred the honour of earl marſhal of England to the King, who granted it to him in tail: This honour is officiary, and therefore nothing to the purpoſe; and the ſurrender was made thro fear, WALSING. 95. The next is the earl of Pembroke's caſe, who in 8 EDW. IV. was made earl in tail, and by this he had the grant of the town of Haverfordue; the King afterwards inclining to dignify his ſon with that title, procured him to ſurrender by deed, and beſtowed on him another title, and gave a greater eſtate, and an ancienter honour. Here was an eſtate tail ſurrendred by deed; it might work a kind of diſcontinuance, but no legal effectual ſurrender. And for the caſe of CH. BRANDON, who in the time of HENRY VIII. was created viſcount Liſle, afterwards he ſurrendred that, and got a dukedom; now no man ever queſtioned the efficacy of this ſurrender, for he himſelf had no reaſon to queſtion it, for 'twas to his advantage; and none other could queſtion it, for he died without iſſue, and his honour with him: And ſo in the caſe of my lord Stafford, he ſurrendred, and got a new honour. So that it appeared all theſe caſes were either honours referring to offices and lands, or elſe ſuch as were for the re-granting of greater dignities, which they had no reaſon to queſtion, and ſo they paſſed *ſub ſilentio*: But here is not one precedent that they did ever ſurrender to the prejudice of their blood, or move themſelves quite out of the houſe by fine or deed. And further, if precedents be good for the ſurrender of an honour by fine, why not alſo for transferring of it to another? for of this we have ſome precedents, DEINCOURT's caſe, 4 Inſt. 126. One branch of the family ſat in the houſe by virtue of a grant from the other branch from the reign of EDWARD II. to HENRY VI. and the caſe of the earldom of Cheſter, firſt granted 17 HENRY III. n. 25. and transferred 39 HENRY III. And there was an attempt made in the lord Fitzwalter's caſe, to make a baron by transferring of the dignity; but you will find all theſe precedents diſallowed: And 'twas ſaid that no man ever met with any caſe where any nobleman by fine levied, or other conveyance, became a yeoman or ignoble.

Lord Grey of Ruthyn.

'Twas argued by another much to the ſame effect, That baronage and peerage is to be determined by the records of the lords houſe, and if any other way be given, as there muſt be, if a fine be allowed to barr, then the old true way is gone: This was not a fine conditional at the common law, and therefore not within the ſtatute *de donis conditionalibus*, and an honour being a perſonal dignity, is not to be barred (JONES rep. 123. *ante* p. 190.) by fine, being inherent in the blood, *&c.* The duke of Bedford was by authority of parliament degraded, and that was for poverty, and by act of parliament, and not by ſurrender: Therefore judgment was prayed for the petitioner.

The arguments of ſir WILLIAM JONES, knight, the King's attorney general, June 5. 1678. in the houſe of lords, upon the caſe touching the honour of viſcount Purbeck *.

THIS is a matter, wherein I am the more properly imployed, becauſe it is that which much imports the King. As the fine was levied to him, ſo I think it much the intereſt of the crown to ſupport that fine; and the practice of many hundreds of years, upon which that fine was granted.

But, according to the method, in your lordſhips order preſcribed us, I ſhall firſt make ſome obſervations on the matter of fact; where I ſhall not concern my ſelf about the point of legitimation. What proofs your lordſhips have had about that, on the one ſide, or the other, I ſhall not trouble my ſelf with; but ſubmit it to your lordſhips memories, and judgment.

But this I muſt take leave to ſay, though it would be a hard matter, to put this gentleman to prove; that if his father was born of his grandmother, that he was likewiſe the ſon of the grandfather, and ſo we baſtardize him before your lordſhips as a court of judicature, after his death: yet I would be glad, your lordſhips did receive ſatisfaction, that he was the ſon of the grandmother: For you are now introducing a man into a family, out of which, he and his anceſtors have been for theſe many years.

I might ask, why he was not, by the name of the family, baptized? Why not mentioned by that ſirname of his father and mother? We can look for no leſs proof, than that ſome woman, who was preſent at his birth, ſhould certify, that he was born of her. But to come after ſo many years, to bring a man into a family, which he, and his, had diſclaimed ſo long, by taking a new name, I ſuppoſe your lordſhips will require ſome good proofs to warrant it.

But whether you have any thing like that, or that may be ſufficient in the caſe, I ſubmit to your lordſhips. His father ſure could have had better evidence than this, than his ſon can now; but he denies him for a long time; and at laſt the moſt he owns him by, is a letter whereby he calls him by his ſirname, which is not very uſual for parents to do, if they have but one child. and what can we think ſufficient to tempt a man, and him noble too, to deny his own fleſh and blood?

But there is another thing which is matter of fact alſo, which is to be obſerved; and that is, there is a defective proof of the creation of this honour; no letters patents ſhewn: no record of the inrollment produced: nor any entry in any office of ſuch a patent, as is uſual, all that is pretended is, that he ſat afterwards in ſome parliaments, as viſcount Purbeck:

But I hope your lordſhips will not accept of this ſort of proof: For firſt, my lords, no man can be created a viſcount, but by letters patent. A writ will not do it. A writ of ſummons will be an evidence of a creation, but will not amount to ſuch an act.

But there is a ceremony equal almoſt to that, of an earl. There muſt be a coronet. Which ceremony muſt be performed, or he muſt have letters patent to diſpenſe with it. Which being matter of record, muſt be produced.

A writ is ſufficient to create a baron; becauſe it being the loweſt degree of nobility, and each order taking place according to priority and creation, he knows his place. But if a man be created a viſcount, he is to take an higher place, and therefore muſt have letters patent to ſhew for his precedency.

In 18 HENRY VI, BEAUMONT was the firſt viſcount created. Before that time there never was ſuch a dignity; nor ſince hath any been created, but by letters patent.

* Copied from ſir WILLIAM DUGDALE's manuſcripts at Oxford; ſee *catalogi librorum manuſcriptorum Angliæ & Hiberniæ*, pag. 296. where it's mentioned thus. 6517. 27. T. The argument of ſir WILLIAM JONES, knight, the King's attorney general, June 5. 1678. in the houſe of lords, upon the caſe touching the honour of the lord viſcount Purbeck. f. 48. *a*. The earl of Shaftſbury's argument upon the ſame caſe, f. 53. *a* DUGDALII *manu*. - - - - - Theſe arguments are abridged in SHOWER's caſes in parliament. p. 5, 6, 7, 8, 9, 10, 11.

Object. But, ſay they, your lordſhips will preſume there were letters patents. Why? becauſe they may be loſt.

Anſw. It is neceſſary for any man that would make out a title to an honour to ſhew his letters patent, or an exemplification of the record, for unleſs they be produced, it ſhall not be imagined there were any. And it is ſaid in PAGE's caſe, COKE's 5 Report p. 53. That the exemplification of patents was ordained chiefly for the ſake of honours.

Object. But it may be a record may be ſupplied by concurrent evidence.

Anſw. It is impoſſible; But then if ſo be a true creation were of this honour, there muſt be ſome evidence of it, in ſome of the offices, which are ſo many for theſe purpoſes; and which, in all other caſes of theſe times, do yet remain: And yet in none of theſe have you any account at all, or the leaſt *veſtigia* of proof, to ground your lordſhips preſumption.

I need not cite caſes, that honours muſt be proved by matter of record; thoſe are very many: But what that record muſt be, is according to the dignity, the ſubject matter.

But now I come to that which is chiefly my work, to maintain the fine in this caſe. The matter is ſuch, as doth deſerve a long argument; but the time is ſhort.

Admitting he, who is called JOHN viſcount Purbeck, was well created, and that you have good proof of it; and that the father of the petitioner were his ſon; then the queſtion comes to be this:

Here is grandfather, father, and ſon: The grandfather is created to an honour in tail. The father levies a fine to the crown of the honour. Whether this honour be well ſurrendred and extinguiſhable, or not, which I conceive it doth.

It is a point which comes before your lordſhips with ſome prejudice, till the reaſon be well underſtood, and the limits of the matter are well ſettled, and eſtabliſhed. But when once they are ſet down it will not ſeem ſo hard a thing, but that the matter may be thought reaſonable; eſpecially if I ſhall confirm it by examples in all ages.

It hath been ſaid, That titles of honour differ from other inheritances, and in truth they do; but it is only where there are particular reaſons for their ſo doing; as in that caſe of tranſmiſſion and alienation of an honour: But I ſhall have occaſion to ſhew by and by, that it depends upon a particular reaſon, and reſembles not this caſe.

In matter of creation it is ſaid, an honour may be created by other words than other inheritances; as if a title be granted to a man, and his heirs males, and ſaith not, of his body, it will create an eſtate tail without thoſe words: And this it will not do in the caſe of any other inheritance; and they cite for it the firſt inſtit. 127. *a.* Now I have read every word of that place of that book, and I can find no ſuch caſe.

I find indeed it is ſaid, if the King for reward of ſervice grant armories to a man and his heirs male, it is an entail of the coat, without the words of his body; and, as hath been ſaid, it ſhall deſcend upon him: But then, I hope your lordſhips will never take that for a caſe of honour; and I fear many other caſes, that were cited, will prove to be as ill applied as that.

But this I do ſay, Honours as well as other inheritances muſt be limited according to the rules of law; and I think I have an expreſs authority to ſay ſo; and that you will find in COKE 8. fol. 1. the Prince's caſe. The dukedom of Cornwal was to be limited in an extraordinary manner: No other inheritance in the world can be limited; and the book ſaith, it could not be ſo done without expreſs act of parliament.

And howſoever any other eſtate or inheritance can be limited, ſo can honours and no other way. An attainder, it is ſaid, doth determine the honour of the ſon. The reaſon of that is becauſe other inheritances are determined ſo by the crime of the father, and ſo it is aſſimulated by the law to other inheritances.

The ſtatute of Weſtm. 2. *de donis conditionalibus*; doth firſt create eſtates tail, and ſays, *Cum aliquis terram dedit, &c.*

Now a man would think, that lands and tenements (*terram*) ſhould be very improper words to comprehend all things that may be entailed, and yet it is moſt certain a title of honour is within theſe words.

Ante p. 137. I am told NEVIL's caſe is not law; but there are other caſes to back it; as inſtit. 1. 20. *&c.* If an honour cannot be entailed, then no remainder can be limited of it; and yet I think there are many lords that now ſit in this houſe, by virtue of remainders, limited upon other eſtates; and yet they ſit with a good title notwithſtanding.

Beſides, for I muſt eſtabliſh this point, the ſtat. 26. HENRY VIII. cap. 17. ſaith, If a man be attainted of treaſon, he ſhall forfeit his lands, tenements, and hereditaments. Now which is the word that doth comprehend honours here, but hereditaments: Which, being a general word, doth comprehend many particulars: And within theſe words honours are comprehended, which ſhews that honours are ſubject to the rules of other eſtates, if ſo be titles of honours be within the general words.

This being premiſed, that honours, though things of higher nature than other inheritances, and though derived from the fountain of honour, the King: Yet when they are once raiſed, are governed by the rules of other inheritances. I come now to ſpeak to the matter; which is the main point: which is, Whether a fine levied of an honour in tail, bars the tail? And that I ſhall endeavour,

1. To prove by reaſons of law; not running about, either to the texts of civil law, or any remote conſiderations; but by the reaſons of our own law, which doth govern honours as well as other things.

2. By a great many examples, ſome whereof have been mentioned: And that there are many more, that honours have been cut off by fine.

3. I ſhall anſwer the objections that have been made on the other ſide; and,

4. Shew, That it is ſo far from being inconvenient, that the contrary is much more ſo.

For the firſt; the reaſons of law, why honours may be cut off by fines to the King, I ſhall urge theſe that follow.

1. Firſt, That known maxim in all laws, and which hath obtained every where; *Nihil magis rationi conſentaneum, quàm rem eodem modo diſſolvi, quo conſtituitur.*

And this is a rule ſo general, that the higheſt authority is not exempted from it; that is the authority of parliament: For it is not poſſible, by an act of parliament, to eſtabliſh any thing ſo firm, but that by another parliament, or another ſeſſion of the ſame parliament, it may be annulled.

And that is the reaſon, why ſome acts of parliament have attempted to do, that which another hath thought reaſonable to undo.

Now to the making of a nobleman, three things concur; a matter of record; a perſon that creates, and a perſon to accept.

The matter of record is the letters patent: The perſon creating is the King, and the perſon to accept is him on whom the honour is conferred.

Now, if the King or his ſucceſſors agree to undo their parts; and the perſon or his ſucceſſors in the honour agree to give away their parts; and there be a matter of record, of as high a nature, concur to the effecting this diſſolution; is there not the ſame reaſon to undo, as there was to create?

I do not maintain, that the party ſurrendring can do it of himſelf; or that the Prince, *pro imperio*, can take this honour from him without law: But if the Prince will concur (which tho' he will never do, but for juſt reaſons) and he from whom it paſſeth, concur alſo in an act (as a fine doth) amounting to a record of as high a nature as letters patents; and thus there is a concurrence of all things that agreed to the creation; I ſee not where is the hazard or inconvenience.

Beſides a man that is in poſſeſſion of an honour, or eſtate of inheritance from the King, hath perhaps many more ways to loſe this honour, than this of ſurrender.

Suppoſe a *ſcire facias* to be brought againſt his patent in the chancery, and matter be ſuggeſted againſt it, whereby it is avoided, ſhall not this vacate the honor? And yet there it was in the power of the anceſtor by good pleading to have ſupported the patent, or by bad pleading to deſtroy it. (BROOK's tit. patent 97.)

And therefore if a man claims a right from the crown, which only paſſeth by matter of record; if the foundation, which is the patent, fail, that which was erected muſt fail too, which might be thought of upon the point of wanting a patent here.

2. All other inheritances in this kingdom, are, by the concurrence of all parties, to be extinguiſhed. There is no eſtate of any man's in this kingdom, that cannot thus be made void. It is true, if any man hath but part of an eſtate, as for life, and there is a limitation to his heirs, ſo as they take as purchaſers, they cannot do it, becauſe there all is againſt him; but no man that hath an eſtate in fee, or in tail of inheritance, but may deſtroy the whole eſtate: And where the eſtate is divided, if all perſons concerned concur, the other may be defeated.

It is a maxim in law, that every right, title and intereſt, in *præſenti* or in *futuro*, may by conſent of all parties be deſtroyed, or taken away. And the law is ſo ſet againſt a perpetuity, that a clauſe in a deed, for an eſtate to continue for ever, is void.

There is nothing in our law, but is periſhable before that time when all the world ſhall periſh: And the neareſt caſe that I can put to ours, is that in JONES 109, 123. *ante* 181, 190.

An office of honour is not aſſignable, and yet it may be extinguiſhed. I argue,

3. *A pari*, from a parity of reaſon, that is between the determination of this inheritance, one way or other,

It is admitted, that if he commit treaſon, whereof he is attainted, he loſeth the honour for himſelf and his poſterity. Now the doing of this act was in his own power, which in it ſelf is unlawful; then I argue, if by an act unlawful and evil, he have it in his power to alienate this from his iſſue, and defeat the deſcent of the entail; there is as much reaſon, why he may by a lawful act part from it.

4. Another reaſon I urge, is, what may be inferred from what has been ſaid. They would make the honour ſo inherent in the blood; that where it toucheth the blood it makes a neceſſity of deſcending with the blood. But I anſwer, there are caſes wherein this inhereney of the blood will not hold: As

1. An honour may be created for life, and there none of the deſcendants are honourable.

2. An honour may be limited to the heirs male of the body, and that doth not give the daughters any poſſibility of inheriting it.

3. So an honour may touch; may entet very fair into the blood, and yet not run with it.

4. It may be limited to the heirs of the body by ſuch a wife: and there the iſſue of the body of a ſecond venter (as near to the father as the other) cannot pretend to it. So that it can be no true ground, that whereever it toucheth the blood of the anceſtor, it muſt deſcend to the ſon.

5. There may be neceſſay reaſons for the extinguiſhing of an honour, and thoſe for the benefit and advantage of the party and his poſterity. It hath been already told you that honours have been ſurrendred, that greater might be granted: Now I would fain know of theſe gentlemen, whether they do not think the former title is extinguiſhed before the latter take effect.

If it be not, then the party hath both together againſt the will of the donor. But it hath been often done in order to greater honours, and ſo ſome of the precedents will make it appear. Now though it may be ſaid the King may accumulate honours; ſo that if a man be a baron, the King may make him a viſcount &c. and yet honours may be of that name or place; and thoſe may be concerned

cerned in it, that it could not be effected but by ſurrender. Therefore if it may be in the power of the anceſtor, for the advantage of his poſterity, by a ſurrender of one honour to take a greater; it may be alſo in his power to do it for their prejudice too.

Beſides it may fall out, that a noble family may come into that great miſery of poverty, and be ſo low, as not to be able to ſupport the honour with decency: And this honour, as it would be a burthen to him, ſo it would be a diſgrace to the reſt of the lords; therefore it would be there convenient to extinguiſh the honour, becauſe the weight of it would much add to the affliction.

But in a third caſe, it may happen to a noble family to have thoſe afflictions in it, that to continue the honour in it, may expoſe nobility to infamy, of which they are obliged to take notice: And to prevent the ſon of adultery from ſucceeding in the family, it may be convenient to ſurrender the honour.

Beſides, could there be a ſtronger and better reaſon in the world, than that it ſhould not be done without the concurrence of the Prince, who being the ſource of honour can beſt judge of the reaſons for ſtopping the ſtream?

But my laſt reaſon on this head, which I reſerved for the laſt and rely upon, and which, without repealing two acts of parliament you cannot anſwer the not giving judgment for us upon, is this; the conſideration of two acts of parliament; the ſtatute of 4 HENRY VII. of fines, and that of 34 HENRY VIII. of lands granted out of the crown in tail.

The ſtatute of fines 4 HENRY VII. ſaith, that tenants in tail may levy a fine of all things that were entailable by the ſtatute *de donis &c.* There are no words nor caſe within the one, to work a tail, but may be cut off by the other. And if theſe gentlemen will allow to me, as they muſt, that there are words enough in the ſtatute of entails to include honours, then they muſt alſo grant that there are enough in the ſtatute of fines; and I know not how they will anſwer it.

It is not enough to ſay it is inconvenient; becauſe here is an act of parliament 34 HENRY VIII. cap. 20. of lands given by the crown in tail for reward for ſervice, and tell us it is inconvenient that theſe eſtates-tail ſhould come within the ſtatute of fines: yet they did ſo, though there were the ſame reaſons given for it then, that are urged for honours now. So that without an act of parliament no eſtate-tail of what nature ſoever can be exempted out of that ſtatute which this caſe hath not; and till an act of parliament be made, I hope there will be no ſuch opinion given.

And this is ſo much conducing to the point in hand, that I rely very much upon it.

My lords, this is what I have to ſay as to the matters of reaſons in law: But if all I have ſaid were not enough to perſuade your lordſhips to alter the law, yet I think this, or leſs than this, might ſerve your lordſhips turn to juſtify the proceedings of law; which is the ſecond point, *viz.* the examples and precedents in former times.

And by them I undertake to prove that honours have been extinguiſhed; and if you can be of another opinion now, you will bring upon titles of honour ſuch inconveniencies, as I know you will be loth to do.

SELDEN in his titles of honour (*ult. edit.* p. 730.) mentions releaſes of honour to have been very frequent: So that it was as well a known thing in his time that honours might be ſurrendred, as that they might be granted. And DELAWARE's caſe in 11 COKE fol. 1. I take it for good authority, that honours may be extinguiſhed as there the caſe was. If the lords had then been of opinion, that they could no manner of way be extinguiſhed, it could never have been the reſolution of that caſe. And that I take to be a pregnant inſtance of the opinion of the law at that time.

In the opinion that hath been cited, in the year 1664. when this matter was done, the King's learned counſel, to whom the matter was referred, did certify it, as the opinion of all the learned men of that age, in the law, that it was lawful. They were three very learned men that made the report, which I take to be great authority, and ſee no reaſon to be againſt their opinion. But

But to come to the precedents, I ſhall rank them each in their due order of time.

The firſt *rot. clauſ.* 4 HENRY III. ANDREW GIFFARD, baron of Pomfret in fee, ſurrendred to the King.

So 23 HENRY III. SIMON MONTFORT was earl of Leiceſter, and had a mind to take that honour from his eldeſt ſon, who had another title, and give it to his youngeſt ſon, and ſo ſurrendred it to the King, who regrants it accordingly.

I ſee they would make uſe of it as a tranſmiſſion, and that earl SIMON did not ſurrender, but granted over to his ſon; and I confeſs that Mr. SELDEN ſeems to make great uſe of it ſo: But herein he is to be encountred with a greater man, Mr. CAMDEN, who in his title, earls of Leiceſter, tells you expreſly he did ſurrender to the King, and in SELDEN's book it is ſaid to be with the concurrence of the King; and therefore it is a precedent for us.

CAMDEN in his *Britannia*, about Richmond, ſaith that King HENRY III. created one earl of Richmond, who did afterwards ſurrender to the King. 11 *Rot. cart.* 24 EDW. I. ROGER DE BIGOD's caſe, who did not only ſurrender the office of earl marſhal, but alſo the earldom of Norfolk.

Now I mention not the office, for that was by tenure, but the other was not. *Rot. clauſ.* 40 EDW. III. *m.* 21. WILLIAM, duke of Juliers, whoſe father was marquis of Juliers, and came in with EDW. III. was created earl of Cambridge, to him and his heirs.

His ſon after comes and ſurrenders the title to the King; and the record both of the creation and ſurrender are here.

CAMDEN in his title of earls of Richmond named before, doth ſhew that EDW. III. created his ſon JOHN of Gaunt, earl of Richmond, who after ſurrendred the honour to the King.

Rot. cart. 12 EDW. IV. n. 11. LEWES DE BRUGGES was created earl of Wincheſter in tail: and afterwards, in 15 HENRY VII. thoſe letters patents ſo granted to him and the heirs male of his body were ſurrendred, and you will find the ſurrender upon the patent roll; as alſo a vacat on the patent.

CAMD. tit. Northumberland, ſpeaks of one JOHN, earl of Northumberland, in the reign of EDW. IV. ſurrendred his title, and it is afterwards granted to another.

The next is that of the earl of Pembroke, which was cited before, and here is the record of his creation 17 EDW. IV. n. 11. and afterwards it was by his ſon ſurrendred back again to the King.

So in 5 HENRY VIII. CHARLES BRANDON was created viſcount Liſle, and in 15 HENRY VIII. n. 1. he ſurrenders to the King, and is after made duke of Suffolk.

In the patent roll of 5 HENRY VIII. part 2. THOMAS, earl of Surry, ſurrenders to the King that earldom, which was granted not long before to his father in tail.

The laſt precedent I ſhall mention is that of ROGER STAFFORD, who was baron Stafford. And the King intending to create ſir WILLIAM HOWARD, knight of the Bath, (ſon to THOMAS, earl of Arundel, who had married the ſiſter of HENRY Stafford, the laſt heir male of the eldeſt branch of that family) baron Stafford: It was adviſed at that time, by the opinion of very learned men, that there might be a fine levied by the ſaid ROGER, of this barony to the King, (which was *in anno* 1639.) and there was one accordingly, by him ſo levied, by which that title of honour is now enjoyed.

There might be many more cited, I doubt not, if they were ſearched; ſo that this is all I ſhall ſay as to matter of precedents.

The third head I ſhall ſpeak to, is to anſwer the inconveniencies and objections, that have been made on the other ſide; whereof the firſt is this,

Obj. 1. That by the ſame reaſon, that you would introduce extinguiſhments; by the ſame reaſon you may alienations.

Anſ. And if I ſhew you no reaſonable difference between the caſes, it may be ſo.

But againſt alienations of honours there may be many reaſons given. Honour as it doth flow from the Prince, ſo it can be conferred by none but the Prince; and therefore the Kings of England, though they have granted power to generals, to give the honour of knighthood and of knights bannerets in the field, for the reward and encouragement of valour; yet this granting of nobility is a prerogative proper to the King's perſon alone: No man can ennoble another but the King.

Time was indeed, when the earls of Cheſter having a county palatine, by virtue of their *jura regalia*, did create barons; but they never ſat in parliament as peers; and the reaſon is becauſe, being things of ſo high a nature, none could confer them but the Sovereign. But if you admit that honours may be tranſmitted, then one lord may make another, and ſo *in infinitum.*

Beſides, I might urge another reaſon they have given as truths and obligations; and common reaſon ſaith, they are not transferable. It is ſaid in our laws, whenever an office is granted to a man and his heirs, it may be granted over: But in ſome caſes, offices are ſo near to the Crown that they cannot be transferred, and ſo in JONES p. 109, 122, 123. *ante* p. 188. it muſt deſcend with the blood, becauſe of the relation it hath to the Crown.

So upon the ſame reaſon no one can transfer an honour for the relation it hath to the Crown. But in caſe of extinguiſhment the truſt and relation do quite ceaſe, and ſo they are different caſes.

Obj. 2. It will, ſay they, be a hard thing to permit lords upon any diſpleaſure conceived againſt their ſons, or through their own weakneſs, to diſinherit their iſſue of their honour.

Anſw. It would be a hard matter for any one to diſinherit his ſon of his land, which yet he may do; and if he leave him honour without the land, he will only lay a weight upon his ſhoulders, that he is unable to bear.

But further, it cannot be done without the concurrence of the Prince, and your lordſhips will never ſuppoſe ſo vile a thing of the Crown, as that it would comply with the knaviſhneſs or ſimplicity of a parent in ſuch a caſe.

Obj. 3. I now come to the third and great objection, which is the judgment of this houſe *in anno* 1640.

Anſw. My lords, I pay a great reverence to the judgment of this houſe; your lordſhips are the higheſt judges of the law; but I muſt crave leave to ſay, that your lordſhips have given me leave *non obſtante* to argue the caſe; and therefore, I believe, intended not that ſhould be any impediment, and under favour it is no judgment, for I take it that your lordſhips as a court of judicature, do as all other judges of the law do, judge of the caſes before you only.

Now *in anno* 1640, a queſtion was in this houſe, whether an honour did deſcend to the half blood? Your lordſhips referred the caſe to my lords the judges, who were of opinion it ſhall.

And thereupon ariſeth another queſtion, which drew on that they call a judgment, upon ſomething which was ſpoken in that caſe; it was made a queſtion, whether a man might convey his honour to another? And the lords reſolved he might not.

And beyond this they go farther to another reſolution, concerning which there was no caſe before them; that a lord cannot ſurrender; the original caſe was about the half blood, the reſolution is he cannot alien: The debate was, whether he could not transfer, and they vote he cannot ſurrender. How then can they pretend that to be a judgment?

Suppoſe it had been reſolved, and I wonder it was not at that time; that as a lord could not alien nor ſurrender, ſo he could not forfeit; and that was a third ſtep which was wanting to make it a perfect buſineſs: For conſidering the times, it had been the moſt convenient reſolution that might be.

Beſides, the King's counſel were never heard to that point, who ſhould, the King being ſo nearly concerned in it.

Object.

Object. But it is a reſolution and a judgment, becauſe entred in the journal of the houſe.

Anſw. Of as great authority in the caſe, is the order your lordſhips made when you conſulted the King's counſel about this gentleman's father; who thereupon gave you a certificate.

There was then much better occaſion to have entred upon a reſolution, than, by the by, there is now, upon the queſtion of power to alien honours. Therefore your deſiring to deliberate upon this, and your receiving the opinion of thoſe learned gentlemen, ſhews that you were not ſo reſolved upon the point.

My lords, in the next place, I come to conſider the inconveniences, which I conceive lie much heavier on the other ſide, for there will be inconveniences of three natures ariſe, if you change the courſe of ſurrenders ſo long practiſed.

1. No lord in this houſe can be in ſafety; for ought I know, there be many that ſit here by virtue of ſurrenders from former lords and who can tell, but ſome of thoſe lords, heirs may be alive, and come to claim their titles? Your lordſhips will ſhake the poſſeſſions of your ſelves, and will make it dubitable, whether or no foreigners and mean perſons may not come to thruſt you out.

2. But if not ſo, it may occaſion confuſion among your ſelves; your former honours have been ſurrendred to accept of other honours; and it may be, ſuch of you, not thinking your titles ſecure, will ſtick to the former as ſurer, and ſo occaſion diſputes and confuſion about precedency.

3. And beſides all, you will put a great diſgrace upon the proceedings of your anceſtors, who deemed this cauſe legal. And I deſire theſe gentlemen to ſhew me any one precedent wherever it was diſallowed, which under favour they muſt do, if they will encounter ſo long and conſtant a practice.

My lords, I am ſorry I have troubled your lordſhips with ſo long a diſcourſe; but I have been as brief as I could. I ſhall ſay no more but conclude the point; that his honour is by this fine well ſurrendred to the Crown, and therefore pray your lordſhips judgment for the King.

The earl of Shaftsbury's argument in the houſe of lords in viſcount Purbeck's caſe.

MR. attorney puts the ſtreſs of his argument upon two aſſertions:

Firſt, That honours are an eſtate tail, and are taken to be within the general words of that ſtatute, *de donis conditionalibus.*

2. Honours are to be governed, as other inheritances, and by the rules of the common law.

I muſt take leave to affirm, that he is extremely miſtaken in both.

As to the firſt, he hath cited the reſolution of the judges in NEVIL's caſe. 2 JAC. 1. See *ante* p. 137.

That was an extrajudicial reſolution, and no judgment of any cauſe before them, and in ſuch caſes the judges do not hold themſelves to be upon their oaths. Neither if there be ſeven of one opinion, and five of another, do they refuſe all to ſign the reſolution of the major part, and it goeth under the denomination of all the judges.

But if it had been a judgment of them all together, they could neither alter, nor new make the law; neither could they make that to be intended within the ſtatute *de donis conditionalibus*, that was not in being till many ages after.

BEAUCHAMP, in RICHARD III's time being the firſt honour that was entailed by patent. BROMFLEET the 27 of HENRY VI. the firſt entailed by writ.

As to Mr. attorney's ſecond aſſertion, it is contrary to the opinion of the moſt learned men, the honour and dignity of this houſe, the practice of the courts in Weſtminſter hall, and the direct evidence of the thing itſelf.

Judge BERKLEY, a very learned judge, you may find in the records of this houſe, Feb. 1. *anno* 1640. delivering his opinion, that honours muſt deſcend from the

the firſt that was ſeized of the honour contrary to other inheritances, and that honours are not governed by the rules of the common law.

Juſtice DODDRIDGE his opinion is, that honours are a perſonal dignity, and fixt in the blood. See his argument *ante* p. 188. *& ſeq.*

Your lordſhips did never ſuffer your honours to be tryed by the courts below, or any where but before yourſelves; although your other inheritances are tryed there as well as other mens.

Neither have the courts of Weſtminſter hall ever taken upon them to try or judge cauſes of that nature, which they might do, if Mr. attorney could make good his aſſertion.

It is evident, out of the nature of the thing itſelf; for if an honour be in fee, and there be a ſon and a daughter by one *venter*, and a ſon by another; the eldeſt brother dies poſſeſt of the honour, the ſiſter there ſhall not inherit the honour, but the brother of the half blood; and yet the lands and other inheritances ſhall go to the King for want of heirs, before it ſhall come to that brother.

For titles of honour are not diſpenſable as other inheritances; neither will their deſcent be guided by the ſtrict rules of the common law.

The lord chief juſtice COKE is of an opinion, on the earl of Bedford's caſe, that his honour could not be taken away but by act of parliament. COKE's report part 7. pag. 7. *& ſeq.*

It will be allowed Mr. attorney, that the concurrence of all parties concerned, may extinguiſh this as well as other inheritances; but all parties concerned cannot be ſuppoſed to concur without an act of parliament.

The whole kingdom have an intereſt in the peerage. It is a dangerous doctrine to ſay, your lordſhips judicature and legiſlative is only your own concern, and not the intereſt and concern of the whole nation.

Your lordſhips are the next thing to the Crown, though that be far above us; but thoſe who reach at that, muſt take you in their way. Your lordſhips were voted uſeleſs and dangerous before the Crown was laid aſide; and, as in the deſcent of the Crown, the whole kingdom have ſuch an intereſt, as the King cannot alien, or ſurrender it; ſo in a proportionable degree, though far leſs, the King and kingdom have an intereſt in your lordſhips titles and dignities.

'Tis granted that honours may be forfeited, but it doth not therefore follow that they may be extinguiſhed, there being two reaſons for the forfeiture, which are peculiar to honour.

1. Becauſe there is a condition in law, that they ſhall be true and loyal to the Crown and government.

2. Honours are inherent in the blood, and when that is corrupted and ſtained, that which was inherent is likewiſe taken away. But in the caſe of ſurrender thoſe reaſons do not hold; here is no breach of any condition in law; here is no corruption of blood.

For theſe two reaſons felony without clergy forfeits honours, whereas other inheritances, though fee ſimple, are only loſt for a year and a day; ſo alſo are freeholds for lives; which is another clear inſtance, that honours are not governed by the rules of the common law, as in other inheritances.

Mr. attorney gives for another reaſon and takes for granted and clear law, that the King can make lords for life, and they ſhall ſit in the lords houſe, and yet theſe honours ſhall not go to their heirs, nor their children be ennobled by it.

This is a point of greater conſequence, if poſſible, than the thing in debate; and Mr. attorney is pleaſed to preſs it upon us, which is not a fair way of arguing, nor to be allowed him.

As to Mr. attorney's precedents,

The firſt he quoted was Mr. SELDEN's titles of honour, fol. 730. which place is directly againſt him; for it ſaith, that the honour of baronages was in the

abbots and priors in right of their abbies, not inherent in them, as men perſonally ennobled: So that Mr. SELDEN's opinion is plainly to be inferred from that; that honour is a perſonal dignity.

The lord DE LA WARE's caſe in COKE's 11th report page 1. makes nothing for Mr. attorney's purpoſe. The judges ſay, the acceptance of a new creation by the father, could not hurt the ſon, becauſe the father, at the time of the acceptance, was not a baron, but diſabled by act of parliament.

From this Mr. attorney would infer, that if the barony had then been in him, he had extinguiſhed the old, by acceptance of the new, which is a way of arguing that he may prove any thing by; for it doth not follow, that becauſe he could not forfeit what was not in him, therefore he ſhould have forfeited it, as if it had been in him.

As for all Mr. attorney's other precedents, out of the *clauſ.* rolls, *rot. cart.* and Mr. CAMDEN, being above eleven or twelve ſurrenders of earldoms, and other honours: It is deſired your lordſhips would conſider theſe three anſwers to them all together, and in groſs.

1. That they were all bare ſurrenders, and no fines; ſo that if Mr. attorney's aſſertion hold, that your honours are an eſtate tail, they cannot be extinguiſhed by ſurrender. And the greater danger Mr. attorney would have your lordſhips apprehend, of thoſe lords coming to claim your places, and the confuſion that would happen to the houſe from it, doth ſtill remain and continue.

2. All theſe ſurrenders were made by perſons, that had advantage by them, having greater honours, or the ſame granted to them, with ſome advantage; ſuch whoſe intereſt were beyond the ſeas were willing to quit their dependencies here, upon conſiderations that pleaſed them: *Volenti non fit injuria.*

3. Is that Mr. attorney concluded his argument with, That none ever came and claimed after? So that all his precedents paſſed *ſub ſilentio*, and never conteſted. If any of theſe ſurrenders had upon a diſpute been adjudged good, Mr. attorney had offered your lordſhips ſomething.

But now we come to Mr. attorney's ſole, ſingle, melancholy precedent of the time of ROGER STAFFORD, about 1638. which was condemned in parliament, *anno* 1640.

If you condemn that judgment becauſe of the time, or that the King's counſel was not heard in it, it is to be obſerved,

1. The affront to the lords, in taking ſuch a fine, was commited *in an.* 1638. and when could it more properly be remedied than in 1640 following? You muſt not expect a prophetical judgment againſt a thing not in being.

2. There was ninety four lords preſent, and the vote was *nemine contradicente*, which gives it as great an authority, as of any parliament that ever was.

3. The King's counſel was not heard in ſhip-money, or knighthood-money, wherein they had more right to claim to be heard than in this caſe.

Beſides all this, a fine is a judgment in the common-pleas, and your lordſhips honours are not triable in the courts below of Weſtminſter hall: But, if the fine be allowed, they muſt be triable there, as well as other inheritances.

There is but one thing remaining of Mr. attorney's argument, which is this, your lordſhips, who, ſome few of you ſit by remainders, as he calls it, are in danger, if it be not allowed that honours are an eſtate tail, which is not denied that they are ſo: But 'tis denied they are an eſtate tail of the ſame nature with other inheritances, nor are they governed as lands and tenements are, neither doth any of your lordſhips ſit by the title of remainders, but by virtue of a new or other grant in the ſame patent.

Die martis, 18 Junij, 1678.

Foraſmuch as upon the debate of the petitioner's caſe, who claims the title of viſcount Purbeck, a queſtion in law did ariſe, whether a fine levied to the

King, by a peer of the realm of his title of honour, can bar and extinguish that title?

The lords ſpiritual and temporal in parliament aſſembled, upon very long debate, and having heard his Majeſty's attorney general, are unanimouſly of opinion, and do reſolve and adjudge, that no fine now levied, nor at any time hereafter to be levied to the King, can bar ſuch title of honour, or the right of any perſon claiming, ſuch title under him that levied, or ſhall levy ſuch fine.

The barony of *CLIFFORD.*

The manner of the proceeding of the right honourable THOMAS, earl of Thanet, in order to the making out his claim to the dignity and title of lord Clifford, *anno* 1690, & 1691.

E. COLL, GREG. KING, Lanc. herald.

THE right honourable THOMAS, earl of Thanet, having been informed that there had been great conteſts heretofore, between the lady ANNE CLIFFORD, his grandmother (ſole daughter and heir of GEORGE, earl of Cumberland) and her uncle FRANCIS, earl of Cumberland, younger brother to the ſaid GEORGE, not only for the Clifford's lands, but alſo for the titles and dignities of lord Clifford, Weſtmerland and Veſcy, and that his lordſhip, as couſin and next heir to the ſaid lady ANNE CLIFFORD, his grandmother, was truly intitled to thoſe baronies, and ought to have it ſo declared: His lordſhip having fully informed himſelf of his right thereto, reſolved forthwith to proſecute his claim to the ſaid titles and dignities: Whereupon adviſing well with his counſel learned in the law, particularly Mr. Serjeant LEVINZ, Mr. FINCH, Mr. LONGVILE, *&c.* and calling to their aſſiſtance Mr. KING Lancaſter herald, who firſt ſtarted this matter to his lordſhip, in ſummer 1690, it was agreed to begin the ſaid claim by petition to the King for the barony of Clifford only, as including the other two titles: Whereupon the following petition being drawn up by Mr. KING, and approved of by Mr. Serjeant LEVINZ, was preſented by his lordſhip to his Majeſty at Whitehall, who was graciouſly pleaſed to refer the ſame to the houſe of peers, the parliament being then ſitting.

To the King's moſt excellent Majeſty,

The humble petition of THOMAS, earl of Thanet, couſin and next heir to GEORGE, earl of Cumberland and lord Clifford deceaſed,

HUMBLY ſhewing, That ROBERT DE CLIFFORD, your petitioner's anceſtor, whoſe heir he is, was ſummoned to parliament by that title, in the twenty eighth year of King EDWARD I. as a baron, the writ being directed ROBERTO DE CLIFFORD; and being alſo ſummoned to ſeveral enſuing parliaments in the ſaid King's reign, and in the reign of King EDWARD II. died ſeiſed of the ſaid title and dignity to him and his heirs as of fee and right; and his heirs as barons Clifford were, from time to time, ſummoned to ſit in parliament by that title, till the reign of King HENRY VIII. which title of lord Clifford, by divers meaſne deſcents, deſcended unto HENRY, lord Clifford, who by the late King HENRY VIII. was created earl of Cumberland, to him and the heir

male of his body iſſuing, and dying thereof ſeiſed, the ſaid dignities and titles; of earl of Cumberland and lord Clifford, deſcended afterwards to GEORGE, lord Clifford, earl of Cumberland, grandſon and next heir of the ſaid HENRY, by reaſon whereof he became of the ſaid dignities ſeiſed; that is to ſay, of the ſaid title of earl of Cumberland, to him, and the heirs male of the body of the ſaid HENRY, and of the ſaid title of lord Clifford, to him and his heirs, and thereof died ſeiſed, leaving one only daughter and heir, the lady ANNE CLIFFORD; (firſt married to RICHARD, earl of Dorſet, and after to PHILIP, earl of Pembroke) by means whereof, as the ſaid title of earl of Cumberland did deſcend to ſir FRANCIS CLIFFORD, knight, brother to the ſaid GEORGE, as heir male of the body of the ſaid HENRY; ſo the ſaid barony of Clifford did deſcend to the ſaid lady ANNE CLIFFORD, as couſin and next heir to the ſaid ROBERT DE CLIFFORD, and daughter and heir to the ſaid GEORGE; and your petitioner being rightful heir to the ſaid Lady ANNE CLIFFORD, his grandmother, does humbly pray your Majeſty,

That the ſaid dignity and title of lord Clifford may be declared (as of right it does) to belong to the petitioner and his heirs,

And he ſhall daily pray for your Majeſty, *&c.*

ſigned, THANET.

The reference at the court at Whitehall, Nov. 26. 1690.

His Majeſty is graciouſly pleaſed to refer the conſideration of this petition to the right honourable the houſe of peers, to do therein as their lordſhips ſhall think juſt.

Nottingham.

Die Jovis 27 die Novembris, 1690.

Upon reading the petition of THOMAS, earl of Thanet, couſin and next heir to GEORGE, earl of Cumberland and lord Clifford deceaſed; ſhewing that ROBERT DE CLIFFORD, your petitioner's anceſtor (whoſe heir he is) was ſummoned to parliament by that title in the twenty eighth year of King EDWARD I. as a baron, the writ being directed ROBERTO DE CLIFFORD, and praying that the ſaid dignity and title of lord Clifford may be declared (as of right it does) to belong to the petitioner and his heirs: It is ordered, by the lords ſpiritual and temporal in parliament aſſembled, that it be, and is hereby referred to the lords committees for privileges, to conſider and report to the houſe, the methods of proceedings upon petitions of this nature.

JOHN BROWNE, cleric' parliament.

Hereupon Mr. KING having made an abſtract from the journals of the houſe, of the proceedings in the claim of the lord Willoughby to the office of great chamberlain of England, *&c.* and alſo of Mr. LONGVILE's claim to the title of lord Grey, delivered the ſame to the clerk, attending the ſaid committee; but before their lordſhips reported the ſame to the houſe, the right honourable ELIZABETH, counteſs of Burlington, daughter and heir of HENRY, the laſt earl of Cumberland, (having upon the motion of the right honourable the earl of Rocheſter, who married her daughter, received notice of the earl of Thanet's claim) preſented a counter-petition to the houſe, a copy whereof is here inſerted.

To the right honourable the lords ſpiritual and temporal in parliament aſſembled.

The humble petition of ELIZABETH, counteſs of Burlington and Cork, ſole daughter and heir to HENRY, late earl of Cumberland and lord Clifford deceaſed,

SHEWETH, That your petitioner being informed, that THOMAS, earl of Thanet, as couſin and next heir to GEORGE, earl of Cumberland, hath petitioned his Majeſty, to declare that the dignity and title of lord Clifford, as of right belongs to him, by deſcending from his anceſtors, GEORGE, earl of Cumberland, and his grandmother the counteſs of Dorſet and Pembroke, whereby intending to diveſt your petitioner of the inheritance of that barony, which deſcended to her from her ſaid father and grandfather FRANCIS, earl of Cumberland, who, after the death of GEORGE, entred to the earldom and thoſe baronies; and your petitioner's father was ſtiled HENRY, lord Clifford (as is uſual for the eldeſt ſon of an earl in ſuch caſes) and was ſo by King JAMES called in an award he made under his great ſeal. Afterwards King CHARLES I. in the third year of his reign, ſummoned the ſaid HENRY to parliament, and was brought into the houſe in his robes in the manner accuſtomed, and delivered his writ to the lord keeper, which being read by the clerk, he was placed next above the baron of Abergavenny, the ancient ſeat belonging to the barony of Clifford. Some time after the counteſs of Dorſet, grandmother to the earl of Thanet, under whom he claims, petitioned the houſe of lords concerning that title, and a day being appointed by the lords the next ſeſſion; it was ordered that the committee for privileges ſhould hear the counteſs's claim, as alſo the lord Percy's and Abergavenny's touching precedency; but the 19th of Feb. following, the committe was appointed by the houſe, to determine the precedency of the two baronies, but not to meddle with the other matter referred to them, relating to that of Clifford; ſoon after the parliament was diſſolved, and nothing was ever ſince heard of her petition, but my lord Clifford, your petitioner's father, enjoyed the ſaid barony without any interruption, all the life time of his father, being called ever after to the parliaments under that title; and dying ſo poſſeſſed, the inheritance of the ſaid barony deſcended to, and remains in your petitioner, as ſhe conceives.

Your petitioner therefore prays, that ſhe may have allowed, by your lordſhips, a reaſonable time to make good the allegations of this petition;

And ſhe ſhall pray, *&c.*

E. Burlington, Corke.

Die Martis 2 *die Decembris*, 1690.

The earl of Bridgewater reported from the lords committees for privileges, in the caſe referred to them upon the petition of the earl of Thanet, claiming the barony of Clifford, concerning the methods of proceedings on petitions of that nature, a ſhort abſtract of the proceedings upon the lord Willoughby's claim, to the titles of earl of Oxford, lord Bulbeck, Sandford and Badleſmere, and office of great chamberlain of England in 1625, and an abſtract of the proceedings in Mr. LONGVILE's claim, to the title of lord de Grey in 1640. which were heard at the bar; and upon reading the petition of ELIZABETH, counteſs of Burlington and Cork, ſole daughter and heir to HENRY, late earl of Cumberland and lord Clifford deceaſed, praying that ſhe may have a reaſonable time allowed, to make good the allegations of her petition, concerning her claim to

the title of lord Clifford: It is ordered, by the lords ſpiritual and temporal in parliament aſſembled, that this houſe will hear counſel for the earl of Thanet, as alſo counſel for the counteſs of Burlington and Cork, for and againſt the ſaid claim, on Tueſday the 14th day of January next, at 10 of the clock in the forenoon.

JOHN BROWNE, clericus Parliamentorum.

But before the day appointed for hearing the ſaid claim, the parliament was prorogued, and met not again till October 22. 1691. In the mean time the ſaid counteſs of Burlington departed this life (*ſcilicet ſexto Januarij*, 1690.) the right of the ſaid counteſs devolved on her eldeſt ſon CHARLES, lord Clifford of Launsborough, who being ſon and heir apparent to the right honourable RICHARD, earl of Burlington (who was created lord Clifford of Launsborough, *anno* 1644.) had ſummons to parliament by the title of his ſaid father's barony, *anno primo* GULIELMI & MARIÆ, his writ being directed CAROLO CLIFFORD de Launsborough; whereupon, leſt the ſaid lord Clifford of Launsborough ſhould, now upon the death of his mother, obtain his writ againſt the next meeting of the parliament, as lord Clifford abſolutely, the earl of Thanet cauſed a *caveat* to be entred with the lords commiſſioners of the great ſeal, againſt the paſſing any ſuch writ, by ſending them the following note or letter.

I Deſire the right honourable the lords commiſſioners for the cuſtody of the great ſeal of England, to give order to their officer attending the ſeal, to enter a caveat, that no writ of ſummons paſs the great ſeal for any perſon as lord Clifford, until I ſhall be heard thereupon: my claim to that barony, depending now in the houſe of lords.

Jan. 19. 1690. ſigned,

Thanet.

Upon the meeting of the parliament October 22. 1691. his lordſhip having adviſed with his counſel, touching the proſecution of his ſaid claim, (who had in the mean time fully ſtudied the caſe) It was agreed that a ſhort pedigree ſhould be drawn up, with a brief ſtate of the caſe annexed thereunto, that the ſame might be printed and diſtributed at the hearing of the cauſe, if occaſion did require: Accordingly Mr. KING, having drawn up the following pedigree and caſe, the ſame was reviſed and approved of by Mr. HALES, and Mr. LONGVILE, in the manner as it is here inſerted.

But for the uſe of my lord's counſel, (whereof Mr. FINCH was deſigned to be the principal, and therefore had long before been retained by his lordſhip) Mr. LONGVILE drew up a larger breviat for their direction in arguing the ſame at the bar of the lords houſe, in caſe it ſhould come to a publick hearing, the copy whereof is here likewiſe inſerted,

ROBERT DE CLIFFORD, first ſummoned to parliament as lord Clifford, by King EDWARD I. by writ dated Decemb. 29. 28 EDWARD I. ſlain 7 EDW. II.

This ROBERT was alſo ſummoned to the enſuing parliaments, held 30, 32, 33, 34, and 35 EDW. I. and 1, 2, 3, 5, 6, and 7 EDW. II.

1. ROGER, lord Clifford, ſon and heir of ROBERT, ſummoned to parliament 13 and 14 EDWARD II. died ſans iſſue 15 EDW. II.

2. ROBERT lord Clifford, brother and heir of ROGER, died 18 EDW. III.

This ROBERT was ſummoned to parliament, *anno* 1, 2, 3, 4, 5, 6, 7, 8, 9, 16, and 17, EDW. III.

1. ROBERT, lord Clifford, ſon and heir to ROBERT, died under age about 24 EDWARD III. ſans iſſue.

2. ROGER lord Clifford, brother and heir of ROBERT, died 13 RIC. II.

This ROGER was ſummoned to parliament 31, 34, 35, 38, 39, 42, 43, 44, 46, 47, 49, & 50 EDW. III. & 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, & 12 RICHARD II.

THOMAS, lord Clifford, ſon and heir of ROGER, died 15 RIC. II.

Summoned to parliament 13, 14, & 15 RIC. II.

JOHN, lord Clifford, ſon and heir of THOMAS, died in France, 10 HENRY V.

This JOHN was ſummoned to parliament 1 HENRY IV. & 1, 2, 3, 4, & 8 HEN. V.

THOMAS, lord Clifford, ſon and heir of JOHN, ſlain 33 HEN. VI.

This THOMAS was ſummoned to parliament 15, 20, 23, 25, 27, 28, 29, & 31 HEN. VI.

JOHN, lord Clifford, ſon and heir of THOMAS, ſlain *anno prime* EDW. IV.

This JOHN was ſummoned to parliament *anno* 38 HENRY VI.

HENRY, lord Clifford, ſon and heir of JOHN, died 15 HEN. VIII.

This HENRY was ſummoned to parliament *anno* 1, 3, 7, 11, & 12 HEN. 7. & 3, 6, 7, & 14 HEN. VIII.

HENRY, lord Clifford, ſon and heir of HENRY, was created earl of Cumberland to him and his heirs male, by patent 17 HEN. VIII. died 34 HEN. VIII.

These two HENRYS, as alſo earl GEORGE, and earl FRANCIS, ſons of the ſaid ſecond HENRY, ſate in parliament as earls of Cumberland only.

HENRY, earl of Cumberland and lord Clifford, ſon and heir of HENRY, died 12 ELIZ.

1. GEORGE CLIFFORD, earl of Cumberland and lord Clifford, ſon and heir of HENRY, died Oct. 30. 1605. ſans iſſue male.

2. Sir FRANCIS CLIFFORD, knight, earl of Cumberland as heir male, after the death of his brother, died *anno* 1641.

His ſecond husband was PHILIP, earl of Pembroke, but ſhe had no iſſue by him.

ANNE, lady Clifford, ſole daughter and heir of GEORGE, earl of Cumberland, died *an.* 1675. She married RICHARD SACKVILLE, earl of Dorſet.

HENRY, earl of Cumberland, ſon and heir of FRANCIS, died without iſſue male *an.* 1643.

1. Lady MARGARET SACKVILLE, eldeſt daughter and coheir to her mother, died *an.* 1676. ſhe married JOHN, earl of Thanet.

2. Lady ISABELL, ſecond daughter, died in the life time of her mother *anno* 1661. ſhe married JAMES earl of Northampton.

Lady ELIZABETH, ſole daughter and heir, married to RICHARD, earl of Cork in Ireland, created lord Clifford of Launsborough, *anno* 1644 and earl of Burlington, 1664. She died *an.* 1690.

ALETHEA, ſole daughter and heir to her mother, wife of EDWARD HUNGERFORD, eſq; ſhe ſurvived her grandmother, the lady ANNE CLIFFORD, but died ſoon after ſans iſſue Oct. 14. 1678.

CHARLES, lord Clifford of Launsborough, by which title he was ſummoned to parliament in his father's life time, *anno prime* GULIELMI & MARIÆ, and ſeated accordingly, now living 1691.

1. NICHOLAS, earl of Thanet, ſon and heir to his mother, as alſo heir to the lady ALETHEA his couſin german, whereby he became ſole heir to his grandmother, the lady ANNE CLIFFORD, and conſequently to the barony of Clifford. He died ſans iſſue *an.* 1679.

2. JOHN, earl of Thanet and lord Clifford, brother and heir of NICHOLAS, died unmarried, *an* 1680.

3. RICHARD, earl of Thanet and lord Clifford, brother and heir of JOHN, died unmarried *an.* 1683.

4. THOMAS, earl of Thanet and lord Clifford, (brother and heir of RICHARD) now living *an.* 1691.

By

By the foregoing pedigree it appears, that THOMAS, now earl of Thanet, is the right and only heir to the noble family of Clifford, as being next heir to the lady ANNE CLIFFORD, his grandmother, (countess of Dorset and Pembroke) sole daughter and heir general to GEORGE, earl of Cumberland and lord Clifford, and consequently the barony and title of lord Clifford, does of right belong to the said earl of Thanet.

For that the title of Clifford is a barony by writ, ROBERT DE CLIFFORD, the first baron, being summoned to parliament, by King EDWARD I. by writ dated Decemb. 29. in the twenty eighth year of his reign, as lord Clifford, the writ being directed ROBERTO DE CLIFFORD, who was thereafter constantly summoned to parliament *temp.* EDW. I. & EDW. II. as lord Clifford, and so were his descendents and right heirs, until HENRY, lord Clifford, heir to the first named ROBERT DE CLIFFORD, being created earl of Cumberland by patent *anno* 17 HENRY VIII. to him and to his heirs male, the said HENRY, and his heirs male, sate in the ensuing parliaments, as earls of Cumberland.

But GEORGE, earl of Cumberland, (grandson and heir to the said HENRY, the first earl of Cumberland) dying seised of the said title of lord Clifford, (*anno* 1605.) to him and his heirs, and of the said title of earl of Cumberland, to him and the heirs male of HENRY the first earl, and leaving one only daughter and heir, *scilicet*, the lady ANNE CLIFFORD, grandmother, to the present earl of Thanet, the said barony of Clifford descended of right to the said lady ANNE, the heir general, and the earldom of Cumberland descended to sir FRANCIS CLIFFORD, knight, brother and heir male to the said earl GEORGE.

Which lady ANNE CLIFFORD (who died *anno* 1675) had issue by RICHARD, earl of Dorset her first husband, only two daughters, *viz.* MARGARET, her eldest daughter and coheir, married to JOHN, earl of Thanet, and ISABEL, the younger daughter, married to JAMES, earl of Northampton, which ISABEL, dying in the life time of her mother, left issue one only daughter and heir, *viz.* ALETHEA, married to EDWARD HUNGERFORD, esq; who survived her grandmother the lady ANNE CLIFFORD, but died the year ensuing without issue; and the said MARGARET, countess of Thanet, surviving her mother, died *anno* 1676. leaving issue NICHOLAS, earl of Thanet, her son and heir, who by the death of the said lady ALETHEA HUNGERFORD (his cousin german) without issue, became sole heir to his grandmother, the said lady ANNE CLIFFORD, and consequently to the barony of Clifford.

So that THOMAS, now earl of Thanet, as brother and heir to earl RICHARD, who was brother and heir to earl JOHN, who was brother and heir to the said NICHOLAS, earl of Thanet, is by means thereof solely and truly intitled to the said barony and Title of lord Clifford, as aforesaid.

Mr. LONGVILE's brief of the case for instruction of my lord's counsel, against the hearing of the cause, at the bar of the house of peers.

The title of the right honourable THOMAS, earl of Thanet, to the barony of Clifford. Novemb. 26. 1690.

THE said earl, on a petition which he preferred to the King, setting forth his title, had a reference to the lords in parliament.

The countess of Burlington soon after petitioned the said lords, and seemed to lay weight on this, that is to say, That after the death of GEORGE, earl of Cumberland, FRANCIS, earl of Cumberland, entered on the earldom and baronies, and that her father (HENRY, the son and heir apparent of the said earl FRANCIS) had been stiled lord Clifford, and by King JAMES I. so called in an award; and that King CHARLES I. in the third year of his reign, summoned the said HENRY to parliament, and that he took place of the lord Bergavenny, and that afterwards, *viz.* in February (as in the petition is mentioned) the committee

was appointed to determine the precedency of the two baronies of Percy and Bergavenny, but not to meddle with the other matter to them referred, relating to the title of Clifford, by reaſon the King was not rightly informed of the lady Pembroke's title to the ſaid barony, when he by writ ſummoned this lord HENRY; and though her claim was juſtly allowed, yet the houſe permitted him to ſit for ſome few ſeſſions, during his father's life time, by that miſtaken ſummons, which could not ſince be inſiſted on, as any pretence of right.

Novem. 27. 1690. Thereupon it was the next day referred to the committee for privileges to look into the methods of proceedings upon petitions of that nature.

Decemb. 2. 1690. The committee reported, and Tueſday January 14. at 10 in the forenoon was appointed, before which time the parliament was adjourned and ſince prorogued.

Anno 1605. GEORGE, earl of Cumberland, (grandſon of HENRY, the firſt earl) died.

Novemb. 3. 1606. MARGARET, counteſs of Cumberland, exhibited a petition to the commiſſioners for the office of earl marſhal, ſetting forth that the King, upon peruſal of her daughter's caſe for the barony of Clifford, had recommended the ſame to their lordſhips.

The caſe then had only this *quære*, as it ſeems by a brief in the manuſcript at Lincolns-inn, concerning this title, *viz.* whether all, or any of the ſaid baronies, be by virtue of the patent of HENRY VIIIth, creating HENRY, lord Clifford, earl of Cumberland, entailed upon the then earl, (*viz.* earl FRANCIS) as appertaining to the earldom, or ought to deſcend in fee ſimple to the lady ANNE as heir general, and whether ſhe be capable thereof yea or no?

A. D. 1627. HENRY CLIFFORD was ſummoned in the life time of FRANCIS, earl of Cumberland his father, *tertio & quarto* CAR. I. by the title of lord Clifford, and ſeated in the place of the old lord Clifford.

May 22. 1627. The lords houſe was moved that the call of the ſaid HENRY, might be no ways prejudicial unto the right of ANNE, counteſs dowager of Dorſet, which was ordered accordingly.

May 16. 1628. The petition of ANNE, counteſs dowager of Dorſet, was preſented to the houſe, which petition was to the King, and by his Majeſty referred to the lords.

May 26. 1628. Ordered a day to be appointed the beginning of the next ſeſſion of parliament, for hearing the ſaid caſe.

June 4. 1628. The petition of ANNE, counteſs dowager of Dorſet was read, and referred to the committee of the bill, concerning the lands of RICHARD, earl of Dorſet, deceaſed.

Feb. 6. & 19. 1628. 4 CAR. I. The committee to meddle with precedency between the two baronies of Bergavenny and Percy, but not with the barony of Clifford, as in the lady Burlington's petition is mentioned.

The title of the earl of Thanet may appear plainly by the pedigrees, ſo there will probably be made only two objections by the lord Clifford of Launsborough.

1. Firſt that HENRY, father of the late counteſs of Burlington, and grandfather of the now lord Clifford of Launsborough, was, as aforeſaid, called by writ, and ſate 3 CAR. I. as lord Clifford.

2. The other, That the earldom of Cumberland, being entailed to the perſon, who had the barony of Clifford, the barony did ſo appertain to that earldom, that it could not be parted from the ſaid earldom, or elſe that a lady could not be capable of ſuch a barony, for ſuch was the *quære*, when this barony of Clifford was claimed by the lady ANNE CLIFFORD, as is aforementioned.

And for the King or otherwiſe, it may be objected and made a *quære*,

3. Whether the lady ALETHEA HUNGERFORD, being the only child of ISABEL, counteſs of Northampton (one of the two daughters and coheirs of the ſaid lady ANNE CLIFFORD) happening to die after the deceaſe of the ſaid counteſs dowager of Dorſet and Pembroke, the honour (becauſe there was two coheirs for a year or two) ſhall not be now revived, to and for the benefit of the earl of Thanet, who is become, by the death of MARGARET, counteſs of Thanet,

net his mother, and of his brothers and of the ſaid lady ALETHEA, ſole heir thereunto.

To the firſt it is anſwered, that where a former right is, the calling by writ, or not calling, doth neither add nor take away, for otherwiſe the King might diſpoſe of the peerage by ſo doing, as, from time to time, he ſhall be miſinformed or prejudiced.

If it be (as it hath often been adjudged to be) a right in the heir general, then it is not in the King to alter, for it is a fundamental law of this kingdom, and cannot be changed.

Tho' the earl of Thanet would conſent, he cannot part with this barony in queſtion, if that reſolution which was made Feb. 1. 1640. be held good, as it was then agreed by the lords, *nemine contradicente*, That a peer could not convey his honour to another.

And that no peer of this kingdom can drown or extinguiſh his honour (but that it deſcend unto his deſcendents) neither by ſurrender, grant, fine, nor any other conveyance to the King.

As the lords did in parliament alſo reſolve, in the caſe of the late lord Purbeck, *anno* 1678. when ſir WILLIAM JONES, as attorney general, argued for the King, and againſt the former reſolution, and there ſir WILLIAM JONES ſaid, that he did not offer to maintain, that the perſon dignified could extinguiſh his honour, or that the prince *pro imperio* can take it from a perſon againſt law; but only argued, that if the Prince and the perſon, from whom it is ſurrendred, concur to an act of a ſufficient nature to equal the firſt creation, the ſame might be ſurrendred: and he ſeemed to think there could, in ſuch caſe, be no hazard or inconvenience; but the lords then reſolved, as afore is mentioned, his arguments notwithſtanding.

This caſe of the lady ANNE CLIFFORD, when cited, hath been often agreed, to have been an injury to the ſaid lady ANNE CLIFFORD, and it concerns the whole peerage, that neither *arte* nor *ingenio*, ſuch a diſplacing of honour be permitted.

Sir WILLIAM DUGDALE mentions this as an error, relating to the nobility, and fit for reformation.

In the arguing of the earl of Kent and Longvile's caſe, the like cenſure, and chief Juſtice BRAMPSTON, in arguing the caſe of the *poſſeſſio fratris* of a barony, did declare for law, that of a barony there can be no poſſeſſion gained, there can be no entry, *&c.* See his argument at large *ante* page 240. *hujus libri.*

The arguments which were uſed, when this point was firſt ſtirred, between the lady ANNE CLIFFORD, and FRANCIS, then earl of Cumberland, to prove that a barony by writ, unto which an earldom is granted in tail, ought to go along with the earldom, or that a lady is not capable of ſuch a barony, make now as much againſt the lord Clifford of Launsborough, his claiming this barony by his mother, as againſt the earl of Thanet's claiming the ſame by his grandmother and mother; wherefore it is to be preſumed, that ſuch way of reaſoning, will not be now in this preſent caſe uſed.

However if the lords pleaſe to look into the reſolves in the ſaid caſe of the earl of Kent and Longvile, and before that, into the caſe of the earl of Rutland and Cecil, touching the barony of Roos, and ſince into the caſe of the duke of Bucks and earl of Rutland, touching alſo the barony of Roos, and alſo into the caſe of the late lord Fitzwalter, they may perhaps find ſufficient ſatisfaction, as to thoſe objections made when the lady ANNE CLIFFORD firſt claimed this barony of Clifford.

As to the third objection that may be raiſed, that is, that the lady ALETHEA HUNGERFORD, ſurviving the counteſs of Dorſet and Pembroke, and ſo there being two coheirs alive, when the barony of Clifford firſt fell and deſcended, tho' ſhe the ſaid lady ALETHEA ſoon after died; that for that reaſon, the ſaid barony ſhall not deſcend to the earl of Thanet, being now the ſole heir to his ſaid grandmother, and to the ſaid barony.

WHITLOCK, in his reading about 1619. hath it, That an honour or title cannot multiply nor be divided, nor communicated to more than one, and therefore if a baron die, having two daughters and heirs, neither of them ſhall bear the title, but it ſhall be loſt, yet if one of them die without iſſue, the other ſhall inherit the barony.

And the earl of Thanet being heir of his mother, who was the elder of the coheirs of the ſaid lady ANNE CLIFFORD, there are divers inſtances that where baronies have ended in two or more daughters and coheirs, the iſſue of the eldeſt hath been moſt generally ſummoned to parliament.

Alſo ſee Mr. SELDEN's titles of honour part II. c. 5. numb. 9. LAURENCE, earl palatine of Pembroke created, as being heir of the eldeſt of the four ſiſters of AYMER DE VALENCE, who had that earldom in fee.

And though baronies by writ being indiviſable inheritances, the King may revive the honour in the iſſue of either, or ſuffer it to lie in abeyance or unrevived, yet when two ſuch daughters be, and one of them dyeth without iſſue, before the King hath diſpoſed the barony elſewhere, the other ſiſter, or the iſſue of ſuch other, hath enjoyed the barony, and ſo by the reaſon of honour and law of right ought to do.

The earl of Thanet muſt make himſelf heir to the perſon firſt ennobled, and that was one of the reaſons why it was held, that no *poſſeſſio fratris* could be of a barony, which the lord Clifford of Launsborough cannot make himſelf.

Alſo though an honour cannot multiply, or be divided, or communicated to more than one, as 1 inſtit. 165. earldom of Cheſter, 12 RIC. II. 112. yet if one of them die without iſſue, the other ſhall inherit the barony, as in the title of lord Weſtmerland, when ISABEL and IDONEA were daughters and coheirs of ROBERT DE VIPOUNT, who died 49 HEN. III.

Whereas in the foregoing brief it is ſuppoſed, this objection may be made againſt the earl of Thanet's claim to the ſaid barony; that preſuming the right to have been in the lady ANNE CLIFFORD, his grandmother, (who was counteſs of Dorſet and Pembroke) yet upon her death, *anno* 1675. that right deſcending to her two coheirs, *viz.* the lady MARGARET, counteſs of Thanet her elder daughter, and the lady ALETHEA HUNGERFORD, the ſole ſurviving iſſue of the lady ISABEL, counteſs of Northampton the younger daughter, the honour was therefore in abeyance or merged in thoſe coheirs; notwithſtanding the ſaid lady ALETHEA died ſhortly after without iſſue: It was thought neceſſary to ſearch what precedents could be found in that caſe, whereby to obviate the ſaid objection.

Whereupon Mr. KING, having collected ſeveral inſtances of honours deſcending to coheirs, revived in the iſſue of the ſurviving coheir, and examined them by the records in the Tower and other authorities; he extracted out of them theſe that follow, which are the rather inſerted, becauſe it is a point that hath not yet been judicially determined, and yet a caſe that may frequently happen hereafter.

Inſtances

Inſtances of honours deſcending to coheirs, enjoyed by, or revived in the iſſue of the ſurviving coheir, when ſuch iſſue is become ſole heir.

JOHN DE PORT, lord St. JOHN of Baſing, ſummoned to parliament *vita patris* 28 EDW. I. he died 12 EDW. II.

HUGH DE St. JOHN, ſon and heir died 11 EDW. III. — MIRABEL, his wife, died 36 EDW. III.

1

EDMOND, lord St. John of Baſing, ſon and heir, died in his minority, *anno* 21 EDW. III. ſans iſſue.

MARGARET, eldeſt ſiſter and coheir, wife of JOHN DE PHILIBERT, ſhe died Oct. 19 *anno* 35 EDW. III.

LUCAS DE POYNINGS, a younger ſon to THOMAS, lord Poynings, was ſummoned to parliament in right of his wife, after ſhe came to be ſole heir, *viz.* from 42 III. to 49 EDW. III.

2

ISABEL, youngeſt ſiſter and coheir, who upon the death of MARGARET the other ſiſter, and JOHN DE PHILIBERT, ſon of the ſaid MARGARET, ſans iſſue 35 EDW. III. became heir to the whole inheritance, ſhe died 17 RIC. II.

JOHN DE PHILIBERT, ſon and heir to his mother, but died ſoon after, *viz.* November 13. 35 EDWARD III. aged three years, whereupon his aunt ISABEL was his heir.

Sir THOMAS DE POYNINGS, knight, ſon and heir, had the title of lord St. JOHN of Baſing, after the death of his mother, and ſo called by the King *anno* 2 HENRY IV. he died 7 HENRY VI.

THOMAS lord Roos, *obiit* 1 EDW. IV.

EDMUND, lord Roos, died ſans iſſue 24 HEN. VII.

1

ELEANOR, eldeſt ſiſter and coheir, wife of ſir ROBERT MANNERS, knight, died *ante* 16 HEN. VIII.

2

ISABEL, younger ſiſter and coheir, married three husbands, but died ſans iſſue *ante* 16 HEN. VIII.

GEORGE MANNERS, ſon and heir, had the title of lord Roos, *jure matris*, and died 5 HENRY VIII. — ANNE St. LEGER.

THOMAS MANNERS, lord Roos, ſummoned to parliament by the title of lord Roos *anno* 7 HENRY VIII. He had livery of the lands of ELEANOR, his grandmother, as alſo of the lands of ISABEL, his great aunt, ſiſters and coheirs to EDMUND, lord Roos, *anno* 16 HENRY VIII. and was the next year created earl of Rutland.

ALMARICK DE St. AMAND, lord St. AMAND, died *an.* 5 RIC. II.

IDA his first wife.

ALMARICK DE St. AMAND, lord St. Amand, died *an.* 4 HEN. IV.

ALIANORE, second wife died *an.* 4 HEN. VI.

Sir GERARD BRAYBROKE, knight.

ALIANORE, only daughter by the first wife, died *vita patris anno* 1389.

IDA, the other daughter and coheir *ætat.* 10. *an.* 4 HEN. IV. she married THOMAS WEST, but died sans issue *circa* 4 HEN. V.

GERARD BRAYBROKE, son and heir and coheir to his grandfather ALMARICK, lord St. Amand, *ætat.* 10. *anno* 4 HEN. IV. he died 10 HEN. V.

1 ELIZABETH, *ætat.* 16. *an.* 4 HEN. VI. she was coheir with her sister ALIANORE, to her sister MAUD, 5 HEN. VI. and afterwards heir to her sister ALIANORE also; 7 HENRY VI. she married sir WILLIAM BEAUCHAMP, knight, who was summoned to parliament by the title of lord St. Amand, *anno* 27 HENRY VI.

2 MAUD, *ætatis* 15. *an.* 4 HENRY VI. wife of JOHN BABINGTON, she died sans issue, 5 HENRY VI.

3 ALIANORE BRAYBROKE, sister and coheir to MAUD, *anno* 5 HENRY VI. she died 7 HEN. VI. sans issue; whereupon ELIZABETH, her elder sister, became her heir.

THOMAS, lord Bardolf, died 9 HENRY IV.

2 JOAN, the younger daughter and coheir, aged 18 years, 9 HENRY IV. wife of WILLIAM PHELIP, called lord Bardolf, *jure uxoris*.

1 ANNE, the elder daughter and coheir, 19 years old, 9 HENRY IV. first married to sir WILLIAM CLIFFORD, knight, after to REGINALD COBHAM, but died without issue 32 HENRY VI.

ELIZABETH, daughter and heir of her mother, died before 19. HENRY VI. she was married to JOHN, Viscount Beaumont.

WILLIAM, viscount Beaumont and lord Bardolfe.

Sir JOHN

Sir JOHN CONIERS, knight, *anno* 10 HEN. VI. — MARGERY, one of the two daughters and coheirs of ſir PHILIP DARCY, knight, ſon and heir to JOHN, lord Darcy.

Sir JOHN CONIERS, knight, ſon and heir, died *an.* 5 HEN. VII.

WILLIAM CONIERS, ſon and heir, bore the title of lord Coniers, in 22 HENRY VII. and was ſummoned to parliament, 1 HENRY VIII. He died 16 HEN. VIII.

Sir CHRISTOPHER CONIERS, knight, lord Coniers, died 30 HENRY VIII.

JOHN, lord Coniers, ſon and heir, died 3 & 4 PHILIPPI & MARIÆ, leaving only three daughters and coheirs.

1 ELIZABETH, wife of THOMAS DARCY, ſon and heir of ſir ARTHUR DARCY, knight.

CONIERS DARCY, ſon and heir, reſtored to the title of lord Darcy and Coniers, *anno* 1641. as heir to ELIZABETH, ſole ſurviving daughter and heir of JOHN, lord Coniers.

CONIERS, lord Darcy and CONIERS, created earl of Holderneſs by King CHARLES II.

CONIERS DARCY, ſon and heir, ſummoned to parliament *vita patris*, as lord Coniers, and had the place of the old lord Coniers.

2 ANNE, married to ANTHONY KEMP of Kent.

3 CATHARINE, wife of JOHN ATHERTON of Lancaſhire; ſhe died *an.* 1622.

Of theſe two daughters there was no iſſue remaining *anno* 1640.

ROBERT DE VIPOUNT, lord of Weſtmerland, *obiit* 49 HEN. III.

ROGER DE CLIFFORD, *occiſus* 11 EDW. I. — 1 ISABEL, eldeſt daughter and coheir of ROBERT DE VIPOUNT.

ROBERT, lord Clifford, died 7 EDWARD II.

ROBERT, lord Clifford, purchaſed from his great aunt IDONEA, 3 EDWARD III. her purparty in Weſtmerland, which afterwards devolved to him, by her dying without iſſue; he died 18 EDWARD III. and his poſterity ever after uſed the title of lord Vipount or Weſtmerland.

ROGER DE LEYBURNE, firſt husband, died 12 EDW. I. — 2 IDONEA, 2d daughter and coheir, living *anno* 3 EDW. III. — JOHN DE CROMWEL, 2d husband, 3 EDW. III.

JOHN DE LEYBURNE, only child of IDONEA, born 9 EDW. I. died ſans iſſue *vita matris*, before 3 EDW III.

Towards the latter end of November 1691. his lordſhip reſolving to revive his ſaid claim, his counſel conſidered of what was neceſſary to be prepared in order to the ſame; but his lordſhip being told by the earl of Rocheſter, that he believed the lord Clifford of Launsborough would not give his lordſhip any trouble therein, there remained only to prove the allegations of his petition, *viz.* 1. That ROBERT DE CLIFFORD, the firſt lord Clifford, was ſummoned

to parliament by that title, 28 EDW. I. and that he and his heirs were ſummoned likewiſe to ſucceeding parliaments by the ſame title.

For which, examined copies of four ſeveral ſummons were taken out of the clauſe rolls in the Tower by Mr. KING's clerk.

2. That the earl of Thanet was the lineal heir to the ſaid ROBERT DE CLIFFORD; to prove which, there was a pedigree formerly drawn by Mr. KING, and atteſted by ſir WILLIAM DUGDALE, garter, *anno* 1682.

3. Whereas JOHN, lord Clifford, was attainted 1 EDW. IV. that HENRY, the ſon was reſtored 1 HEN. VII. A copy of which reſtoration was examined with the record by Mr. KING's clerk, at the rolls chapel.

4. That the patent of creation of HENRY, lord Clifford, to be earl of Cumberland, did ſtile the ſaid HENRY, lord Clifford, Weſtmerland, and Veſcy, and limited the earldom to the heirs male. A copy whereof was examined by the ſaid Mr. KING's clerk, with the record, in the office of the lord treaſurer's remembrancer in the exchequer.

Hereupon, at the inſtance of the ſaid earl of Thanet, the marquis of Halifax moved the houſe, to conſider of his lordſhip's claim, who thereupon made the following reference.

Die Martis 8 *Decembris*, 1691.

The houſe being this day moved, in the caſe upon the claim of THOMAS, earl of Thanet, (formerly brought into this houſe) to the title of lord Clifford, and the houſe being informed by the lord Clifford of Launsborough, who claimed under the late counteſs of Burlington his mother, that he doth not obſtruct the ſaid claim: It is ordered, by the lords ſpiritual and temporal in parliament aſſembled, that it is referred to the lords committees for privileges, to examine the earl of Thanet's claim to the ſaid barony of lord Clifford, and report to this houſe.

MAT. JOHNSON, cleric' parliamentor.

His lordſhip having taken out a copy of the ſaid order of reference, ſent it to the heralds with the following letter, to deſire them forthwith to draw out his pedigree from ROBERT DE CLIFFORD, the firſt lord Clifford, and to atteſt it in form againſt the meeting of the committee.

Gentlemen,

I Have petitioned his Majeſty that the dignity and title of lord Clifford, (being a barony by writ) may be declared to belong to me and my heirs, as being the right heir to ROBERT DE CLIFFORD, who was firſt ſummoned to parliament as lord Clifford, 28 EDW. I. And upon his Majeſty's referring the ſame to the houſe of peers, to do therein, as to their lordſhips ſhall ſeem juſt, their lordſhips, by their order of the 8th inſtant, (a copy whereof I herewith ſend you) having referred the ſame to the lords committees for privileges, to examine my claim to the ſaid barony of Clifford, and to report to the houſe; (which committee is appointed to ſit on Friday next) I deſire you will in the mean time draw out my pedigree from the ſaid ROBERT DE CLIFFORD, and atteſt it in ſuch authentick manner, as you ſhall judge fitteſt for the end beforementioned, and in ſo doing, you will oblige,

Monday Dec. 9. 1691.

Gentlemen,

Your humble ſervant,

Thanet.

Superſcribed, To the King's heralds, and purſuivants of arms.

Hereupon

Hereupon Mr. KING, Lancaſter herald, and regiſter of the college of arms, did, by order of the heralds aſſembled in chapter, draw up the following pedigree, which being examined by garter and others of the officers of arms, was ſigned by them in the preſence of the ſaid Mr. KING.

ROBERT DE CLIFFORD, firſt ſummoned to parliament as lord Clifford, by EDW. I. by writ dated Decemb. 29. *anno* 28 EDW. I. as alſo to ſeveral other parliaments in that reign, and *temp.* EDW. II. ſlain *anno* 7 EDW. II.

1 ROGER, lord Clifford, ſon and heir of ROBERT, ſummoned to parliament 13 & 14 EDW. II. died ſans iſſue 15 EDW. II.

2 ROBERT, lord Clifford, brother and heir of ROGER, ſummoned to ſeveral parliaments *temp.* EDW. III. died 18 EDW. III.

1 ROBERT, lord Clifford, ſon and heir of ROBERT, died under age ſans iſſue 31 EDW. III.

2 ROGER, lord Clifford, brother and heir of ROBERT, ſummoned to ſeveral parliaments *temp.* EDW. III. & RIC. II. died 13 RIC. II.

THOMAS, lord Clifford, ſon and heir of ROGER, ſummoned to parliament *temp.* RIC. II. died 15 RIC. II.

JOHN, lord Clifford, ſon and heir of THOMAS, ſummoned to parliament *temp.* HEN. IV. & HEN. V. and died in France 10 HENRY V.

THOMAS, lord Clifford, ſon and heir of JOHN, ſummoned to ſeveral parliaments *temp.* HEN. VI. ſlain 33 HEN. VI.

JOHN, lord Clifford, ſon and heir of THOMAS, ſummoned to parliament 38 HENRY VI. ſlain *an.* 1 EDW. IV.

HENRY, lord Clifford, ſon and heir of JOHN, ſummoned to ſeveral parliaments *temp.* HEN. VII. & HEN. VIII. died 15 HEN. VIII.

HENRY, lord Clifford, ſon and heir of HENRY, created earl of Cumberland to him and his heirs male, by patent 17 HEN. VIII. died 34 HEN. VIII.

HENRY, earl of Cumberland and lord Clifford, ſon and heir of HENRY, died 12 ELIZ.

1 GEORGE, earl of Cumberland and lord Clifford, ſon and heir of HENRY, died Oct. 30. 1605. 3 JAC. I. without iſſue male.

2 Sir FRANCIS CLIFFORD, knight, earl of Cumberland as heir male, after the death of his brother, died *anno* 1641.

Her ſecond husband was PHILIP, earl of Pembroke, but ſhe had no iſſue by him.

ANNE, lady Clifford, ſole daughter and heir of GEORGE, earl of Cumberland, died *an.* 1675. She married RICHARD SACKVILE, earl of Dorſet.

HENRY, earl of Cumberland, ſon and heir of FRANCIS, died without iſſue male *an.* 1643.

1 Lady MARGARET SACKVILE, eldeſt daughter and coheir to her mother, died *an.* 1676. ſhe married JOHN, earl of Thanet.

2 Lady ISABELL SACKVILE, ſecond daughter, married to JAMES, earl of Northampton, by whom ſhe had iſſue only one daughter, who died ſans iſſue.

1 NICHOLAS, earl of Thanet, ſon and heir to his mother, and alſo heir to his grandmother, the lady ANNE CLIFFORD. He died ſans iſſue *an.* 1679.

2 JOHN, earl of Thanet, brother and heir of NICHOLAS, died unmarried, *an.* 1680.

3 RICHARD, earl of Thanet, brother and heir of JOHN, died unmarried *an.* 1683.

4 THOMAS, earl of Thanet, brother and heir of RICHARD, is now living *an.* 1691.

At

At the requeſt of the right honourable THOMAS, earl of Thanet, the pedigree abovewritten from ROBERT DE CLIFFORD, the firſt lord Clifford, who was ſummoned to parliament 28 EDW. I. down to the ſaid earl of Thanet, being ordered by the King's heralds and purſuivants of arms in chapter aſſembled, to be extracted out of the books and records of their office, was ſo extracted accordingly, and the truth thereof atteſted at the college of arms, this 10th day of December 1691. by us whoſe names are hereunto ſubſcribed.

THOMAS St. GEORGE, Garter principal King of Arms. JOHN DUGDALE, Norroy King of Arms. HENRY DETHICK, Richmond Herald.

GREGORY KING, Lancaſter Herald. CHARLES MAWSON, Cheſter. PEERS MAUDUIT, Windſor Herald.

LAU. CROMP, Portcullis. PETER LE NEVE, Rougecroix.

Friday morning December 11. Mr. KING the herald, and his clerk SAMUEL STEBBING, were ſworn at the bar of the houſe of peers (the houſe ſitting) in order to their atteſting the pedigree and copies of records beforementioned.

And in the afternoon the lords committees for privileges being met in the houſe of peers, and Mr. LONGVILE, Mr. KING, and his clerk attending, Mr. KING delivered to the earl of Thanet ſeveral copies of the foregoing pedigree, as atteſted by the heralds, which his lordſhip gave to the marquis of Halifax and other lords.

Then the committee being ſate, and the biſhop of Salisbury in the chair, Mr. KING was called in with the ſaid pedigrees, which he was ordered to read at the bar of the houſe; and being read, and Mr. KING examined as to the ſubſcription of the heralds thereto, their lordſhips agreed upon the report following, which was read and agreed unto the next morning in the houſe.

Die Sabbathi 12 *Decembris*, 1691.

The lord biſhop of Salisbury reported from the lords committees for privileges, that their lordſhips have conſidered the pedigree of THOMAS, earl of Thanet, to the barony of lord Clifford, which was brought to their lordſhips by Mr. GREGORY KING, an herald (ſworn at the bar of the houſe) and atteſted by ſir THOMAS St. GEORGE, and the other heralds, and their lordſhips are of opinion, that THOMAS, now earl of Thanet, is the ſole lineal and right heir to ROBERT DE CLIFFORD, firſt ſummoned to parliament as lord de Clifford, by writ dated December 29. 28 EDW. I. And that the ſaid title and barony of lord Clifford, doth of right belong to the ſaid earl of Thanet and his heirs; to which the houſe agreed.

MAT. JOHNSON, cleric' parliament.

7192. excerpta ex libro NICOLAI UPTON, de re militari & de inſignibus & armis 837.

Among the MSS. in the Aſhmolæan collection at Oxford, is the following ſtate of this caſe.

The titles of the baronies of Clifford, Weſtmerland and Veſcy ſeverally deduced.

* Dated at Roſſe in Scotland Sept. 27. 28 EDW. I. Rotulo finium 9 HEN. III.

The barony of Clifford had his original by *writ of perſonal ſummons to parliament, directed to ROBERT of Clifford, in the 28. EDW. I. not by reaſon of any local barony, for Clifford held by a knight's fee, and not by a barony, (as appears by records). To this ROBERT, the lady ANNE is undoubted heir general, and from him deriveth her title by deſcent in the direct line.

ROBERT of Vipont, lord of Weſtmerland, died in the time of King HENRY III. leaving iſſue ISABEL, married to ROGER CLIFFORD, and IDONEA, married to LEYBURNE; IDONEA died after without iſſue, and the honour and inheritance fell upon ISABEL, wife of ROGER CLIFFORD: to which ROGER and ISABEL, the lady ANNE is alſo undoubted heir general, and from them deriveth her title by twelve lineal deſcents.

The barony of Veſcy had its original by writ of ſummons to parliament, 49 HEN. III. directed JOHN DE VESCY. This barony is tranſplanted into the family of CLIFFORDS by divers deſcents upon daughters and heirs, namely, the daughter and heir of lord Veſcy, married to ATON, the eldeſt daughter and coheir of ATON, married to St. JOHN, the daughter and heir of St. JOHN, married to BROMFLET, the daughter and heir of BROMFLET, married to CLIFFORD. HENRY BROMFLET, by writ dated Jan. 22. 26 HEN. VI. was ſummoned to parliament, in which writ are theſe words, *Volumus enim te & heredes maſculos de corpore legitime exeuntes barones de Veſcy exiſtere.* Notwithſtanding which the CLIFFORDS deſcending from the daughter and heir of BROMFLET, have been in divers patents of divers Kings ſtiled lord Clifford, Weſtmerland, and Veſcy; whereby it appeareth, that thoſe ſpecial words in the writ which offer to limit the barony to an eſtate tail, were conceived by the ſucceeding King to have no power to reſtrain the fee ſimple of the barony, which was deſcended upon BROMFLET by writ of inheritance, as heir general to the firſt lord Veſcy. MARGARET, * daughter and ſole heir of HENRY BROMFLET, lord Veſcy, was married to JOHN, lord Clifford, to which JOHN, and MARGARET, the lady ANNE CLIFFORD is undoubted heir general, and deriveth her title from them by five lineal deſcents; none of theſe baronies (for any thing that can be found to the contrary) are holden by barony, or are local baronies, but had their original by perpetual writ of ſummons to the parliament as aforeſaid.

49 HEN. III. membr. 11. in dorſo in Turri Lond.

12 HEN. VII. *rot. pat.* p. 1. 15 HEN. VII. *rot. pat.* p. 2. 15 HEN. VIII. *pat.* p. 2. 16 HEN. VIII. The creation of the earl of Cumberland.

* The like caſe ſo reſolved in DELAWARE's caſe. COKE's 11th Report p. 1.

The Barony of *WILLOUGHBY OF BROKE.*

An account of the proceedings of ſir RICHARD VERNEY, knight, in order to the making out his claim to the dignity and title of lord Broke or lord Willoughby of Broke, in the years 1694. and 1695.

THE right worſhipful ſir RICHARD VERNEY, of Compton in com. Warr, knight, having fully informed himſelf of his right to the barony of his anceſtor, ſir ROBERT WILLOUGHBY, knight of the garter, to whom he was lineal heir, reſolved to proſecute his claim to the ſaid barony; whereupon having maturely conſidered with his eldeſt ſon JOHN VERNEY, eſq; who had been educated in the inns of court, and having adviſed with his counſel learned in the law, *viz.* ſir THOMAS POWIS, and Mr. NORTHEY, and conſulted with Mr. KING, Lancaſter herald, and procured examined copies of the ſeveral inquiſitions and clauſe rolls, and other records and judgments, neceſſary for the proving his deſcent and title to the ſaid barony, he firſt exhibited his petition to the King for the ſaid title or barony of Broke November 21. 1694, the ſubſtance whereof was as followeth, *viz.*

E. COLL. GREG. KING, Lanc. herald.

That the petitioner, ſir RICHARD VERNEY, knight, claims the barony of Broke, as lineal heir to ſir ROBERT WILLOUGHBY, knight of the garter, who was ſummoned to parliament as lord Broke, *anno* 7 HEN. VII. the writ being directed ROBERTO WILLOUGHBY de Broke, chivalier; to whom ſucceeded ſir ROBERT WILLOUGHBY, knight, his ſon and heir, the ſecond lord Broke, who was ſummoned to parliament by the ſame title, *temp.* HEN. VIII. and ſate accordingly, and died ſeiſed thereof to him and his heirs, as of fee and right; whereupon the ſaid barony deſcended to ELIZABETH, lady Grevile, grandchild, and at length ſole heir to the ſecond lord Broke, and came afterwards to her grandchild and heir, ſir FOULK GREVILE, knight; and though he was created lord Broke of Beauchamp's Court, by King JAMES I. by patent to him and his heirs male, with remainder to his couſin ROBERT GREVILE, and his heirs male, yet was he rightfully intitled to the ſaid barony of Broke in fee, and dying without iſſue, the ſaid barony in fee deſcended to MARGARET, lady Verney, his ſiſter and ſole heir, grandmother to the petitioner; whereupon he prays that the ſaid title of lord Broke may be revived in him, and that he may have his Majeſty's gracious writ of ſummons to ſit in parliament accordingly.

Which petition was Novemb. 28. 1694. referred by the King to the houſe of peers then ſitting, to do and determine thereupon what ſhould be found juſt and right.

Who thereupon ordered, to hear council at the bar for the petitioner, as alſo counſel for any other perſons, who ſhould think themſelves concerned, on Thurſday the 20th of December, and ordered the heralds to attend at the ſame time.

Accordingly ſir RICHARD VERNEY's claim to the barony of Broke was argued by his counſel at the bar of the houſe of peers, who ſet forth,

1. That ſir ROBERT WILLOUGHBY, knight of the garter, was created a baron by writ of ſummons.

2. That ſuch writ of ſummons, and ſitting thereupon, did create an eſtate in fee.

3. That ſir RICHARD VERNEY, the petitioner, was lineal heir to the ſaid barony.

And counſel being likewiſe heard in behalf of the lord Broke of Beauchamp's Court, againſt the ſaid claim; agreed the pedigree, but argued,

1. That ſuch honours ought to deſcend to the heirs male.

2. That either it was not extinct by coming to coheirs; or elſe

3. That if it was not extinct by deſcending to coheirs, yet ſir FOULK GREVILE's acceptance of a new patent in tail male of the ſame title, the barony in fee was thereby extinguiſhed.

4. That if they had a title to any barony, it was to Willoughby of Broke, and not to lord Broke.

And in concluſion it was ordered, that the attorney general ſhould argue for the King, on Monday the 7th of January following.

Monday Jan. 7. 1694. the attorney general argued for the King againſt the ſaid claim.

1. Giving an account of the ſeveral ſorts of baronies, *viz.* by tenure, by writ, and by creation; urging that a ſummons by writ did not create an eſtate in fee, for that antiently ſeveral had been ſo ſummoned, and yet their ſons had never been ſummoned after them, nay ſometimes the very perſon firſt ſummoned had after been omitted to be ſummoned; but that he did not deſign to urge that any further, but inſiſted chiefly, that even in the time of King HENRY VII. when ſir ROBERT WILLOUGHBY was firſt ſummoned, it was not looked upon as an eſtate in fee, urging LATIMER's caſe, and of later times ABERGAVENNY's and PAGET's.

2. Arguing, That if it deſcend, it was extinguiſhed in the coheirs, urging the earl of Oxford's caſe.

3. Arguing againſt it from the long diſcontinuance, *viz.* from 13 HENRY VIII. and the inconvenience that might ariſe by letting in a multitude of claims of the like nature.

And

And the counſel for the petitioner was likewiſe heard in reply to Mr. attorney, and defended the petitioner's claim by arguing

1. That as to the baronies of Latimer and Abergavenny, thoſe honours followed the entail of the lands, as baronies by tenure.

2. As to the reſolutions in the earl of Oxford's caſe, touching the baronies of Bulbeck, Sandford and Badleſmere, *anno* 1625. that they were in his Majeſty's diſpoſition; they allowed the King might diſpoſe of them to which of the coheirs he pleaſed, during the coparcenerſhip, but not to a ſtranger, nor to the heir male collateral, who had no right thereto, ſo long as there were heirs general, citing DACRE's caſe *an.* 11 ELIZ.

3. As to the long diſcontinuance, they cited the reſolutions in LONGVILE's caſe, *an.* 1640. That no peer can alien or transfer his honour, nor drown, nor extinguiſh it, by ſurrender, grant, fine, nor other conveyance, as alſo the reſolutions in PURBECK's caſe, *an.* 1678. againſt levying a fine of an honour; ſo that if a perſon cannot by the moſt ſolemn act in law, diveſt himſelf of his honour, he cannot loſe it by a bare neglect of claiming, inſtancing two earls of Kent, who *temp.* ELIZ. ſucceſſively declined the title of earl, but were required to reaſſume it.

And as to the letting in a multitude of claims of the like nature, that it did not appear, that there was any real grounds for that ſuggeſtion.

Laſtly, Counſel for the lord Broke of Beauchamp's Court was heard, who objected as before, the acceptance of the patent, or that the title was Willoughby; whereupon the further debate was adjourned to Thurſday 10th of January following.

At which time the lord keeper reported to the houſe, what was offered by the King's attorney general, and the other counſel, for and againſt ſir RICHARD VERNEY's claim to the barony of Broke; and after long debate had thereupon, it was reſolved upon the queſtion, that the petitioner had no right to a writ of ſummons to parliament.

Whereupon a committee was appointed to draw up a report to the King purſuant to the ſaid reſolution, ſince the two chief reaſons for rejecting the ſaid claim, ſeemed to be either that the ſaid barony was for ſome time lodged in coheirs, and that therefore it was in his Majeſty's power to hold the ſame in ſuſpence or abeyance, or to extinguiſh the ſame, or the diſcontinuance of claiming: But the committee was further adjourned, before any report made: But in the interim ſeveral of the peers, as the earls of Lindſey, Thaner, Suſſex, and Abingdon, the lord Delaware, *&c.* who had baronies by writ in them, ſome whereof had at this time only daughters, looking upon themſelves concerned from what was mentioned at the committee, in relation to the deſcent of ſuch baronies on coheirs, moved the houſe that a day might be appointed, to conſider of what had been mentioned by ſome lords that day, in relation to the deſcent of baronies by writ, and a day was appointed accordingly. In purſuance whereof the lords who intereſted themſelves therein, were on Tueſday March 12. 1694-5. heard by their counſel, *viz.* Mr. FINCH, and ſir THOMAS POWIS, and it was then ordered, that the King's attorney general ſhould be likewiſe heard, touching the ſaid matter.

On March 16. the attorney general argued for the King, againſt the deſcents of baronies by writ, and the counſel for the lords replied and produced the precedents, which being collected by Mr. KING, Lancaſter herald, were printed on that occaſion; whereupon it was ordered, that the heralds ſhould be heard as to the ſaid precedents, on Tueſday March 19.

Tueſday March 19. the heralds were heard at the bar, purſuant to the order of the 16th of the ſame month in relation to the deſcents of baronies by writ, and ſir THOMAS St. GEORGE, Garter, made ſeveral objections to the ſaid printed precedents, upon which Mr. KING was called to prove the ſame, who juſtified the ſaid precedents by the books and records of the heralds office; and an authentick copy of the King's recognition of the barony of Ogle, *an.* 4 CAR. I.

being read at the bar, and the matter being reported by the lord keeper, and the queſtion being put,

Whether if a perſon ſummoned to parliament by writ, and ſitting die, leaving iſſue two or more daughters who all die, one of them only leaving iſſue, ſuch iſſue has a right to demand a ſummons to parliament?

It was reſolved in the affirmative.

Thus the principal objection touching the extinguiſhment of the barony of Broke, by reaſon of its deſcending to coheirs being removed; ſir RICHARD VERNEY exhibited a freſh petition to the houſe, alledging that the direction of the writ being ROBERTO WILLOUGHBY de Broke, chevalier, the title created thereby might not be the ſame that the petitioner claimed, and that he was afraid his pedigree was not truly repreſented from the bar, and therefore prayed leave to clear that, or any other objection againſt his claim; but in debating whether his petition ſhould be received or no, their lordſhips gave him leave to withdraw the ſame; ſhortly after which, that ſeſſions came to a concluſion, and before winter a new parliament was ſummoned to meet November 22. 1695.

Whereupon ſir RICHARD VERNEY, reſolving on a new proſecution of his right to the ſaid barony, and being adviſed to claim the ſame, by the title of lord Willoughby of Broke, as being the more genuine interpretation of the direction of the writ to his firſt anceſtor, did humbly petition his Majeſty for the ſaid barony, but praying in general words the peerage of his anceſtor, without limiting it to any expreſs title; which petition was referred by the King to the houſe of peers January 4. 1695-6 to certify his Majeſty how the ſame ſhould appear to them.

On the 9th of January the petition was brought into the houſe of peers, with the King's reference thereupon; which being read, it was adjourned to Jan. 17, and then after a long debate, reſolved that the petitioner ſhould be heard upon his new matter, and the King's counſel and the heralds were ordered to attend.

Accordingly on Monday Febr. 3. the petitioner's claim was argued by his counſel at the bar of the houſe, and ſir JOHN HAWLES, the King's ſolicitor, and Mr. COOPER, one of the King's counſel, argued for the King againſt the ſaid claim: the arguments of the petitioner were much the ſame as the ſeſſions before, only the counſel inſiſted more expreſly upon the peerage in general, and vouched the judgment of the houſe, touching the deſcent of a barony to coheirs to take off that objection.

The King's counſel inſiſted on the vote of the houſe the laſt ſeſſions, *viz.* That ſir RICHARD VERNEY had no right to a writ of ſummons to parliament. But argued likewiſe againſt the deſcent of ſuch baronies, the caſe of coheirs, the taking a new patent, *&c.* whereupon the lords, after a long debate, confirmed their former judgment, that the petitioner had no right to the title of lord Broke, and ordered he ſhould be heard particularly as to the title of lord Willoughby of Broke.

Accordingly on Thurſday Febr. 13. the petitioner was heard by his counſel, ſir THOMAS POWIS and Mr. NORTHEY, ſetting forth in ſhort the claim to the barony of ſir ROBERT WILLOUGHBY, ſummoned to parliament, 7 HEN. VII. which created an eſtate in fee; that the petitioner was lineal heir to the ſaid ſir ROBERT WILLOUGHBY, that the ſaid barony could not be extinguiſhed ſo long as there was a lineal heir in being; but as to the ſtile or title of the ſaid barony, that it was *queſtio nominis* and not *rei*, and thereupon they inſiſted upon the genuine interpretation of the writ, and ſhewed many precedents.

1. That the titles of all the ancient baronies by writ were nominal, or perſonal, not local.

2. That the addition of places came only to diſtinguiſh them from others of the ſame ſirname.

3. That though, of later times, it hath been uſual to inſert in the writ, the

addition of a place to the ſirname, yet the title of honour has been that of the ſirname, and not of the place, as JOHANNI MANNERS de Haddon, chevalier, the title was lord Manners, not lord Haddon, *&c.*

4. That where the title is not the ſirname of the party, but ſome other name, or ſome place of note, the general practice is to omit the ſirname of the party, in the direction of the writ, as 36 HEN. VIII. WILLIELMO Domino St. John, chevalier, omitting the ſirname of PAWLET, and ſo in many others.

5. That though the original title in all the antient writs of ſummons, was the ſirname of the perſon ſummoned, yet in proceſs of time ſome of thoſe local additions, which were at firſt introduced only to diſtinguiſh the perſon, from ſome other of the ſame ſirname, have by corruption been introduced as the true title; as the lord Grey of Ruthyn, was commonly called lord Ruthyn; lord Howard of Walden, lord Walden; and ſo *anno* 1 MARIÆ, lord Howard of Effingham, entred all along in the journals *dominus Howard de Effingham*, or *dominus Howard admirallus*, but in 1 JAC. I. *dominus Effingham*; and the late lord Howard of Effingham, in ſigning the declaration *anno* 1689. writ Effingham; whereas the words in the patent are *baronem Howard de Effingham &c.* And the like in the title of Butler of Weſton, the late earl of Arran, writing himſelf lord Butler of Weſton, and the preſent earl of Arran lord Weſton, though created in the ſame words in their reſpective patents, which ſerved to prove, that as the entring the names of the peers in the journals of the houſe, was not a ſufficient authority for fixing a title to an honour, ſo the peers themſelves did ſometimes miſtake their own titles.

And in the laſt place ſir THOMAS POWIS read a liſt of thoſe peers who have baronies by writ in them, included under higher titles, and alſo a liſt of thoſe lords, who now ſit in the houſe by vertue only of original writs of ſummons, and by deſcent from baronies in fee, and a liſt of ſeveral noble ladies who have now ſuch baronies in them, ſome of which have been declared baroneſſes in parliament; and inſinuated to the lords, that while he was arguing one peer into the houſe, the King's counſel were arguing ſeveral noble dukes and earls out of their baronies, and ſeveral ſitting barons out of the houſe; for if a ſummons by writ, was not an eſtate in fee, and deſcendable, then might the King chooſe, whether he would ſummon thoſe barons any more to parliament, after the concluſion of the preſent parliament, and ſo by that means would ſubject the peerage to great uncertainties and prevarications, by being ſometimes lords and ſometimes commoners, and conſequently deſtroy all their reſolutions and judgments touching the deſcent of ſuch baronies.

The King's counſel urged ſeveral inſtances of ancient times againſt the deſcent of ſuch baronies, and argued againſt the operation of the writ, and that in this caſe it did not appear, but that the firſt foundation of the honour might have been by patent, or for life, or in tail male, and vouched ſir HENRY BROMFLET lord Veſcy's writ of ſummons, and inſiſted ſtrongly that if the petitioner had right to any title, it was to Broke, and not to Willoughby of Broke: They allowed that a non-claim was no bar, if it was not limited, but however that ſuch deſcent of baronies were not *de jure*; that all the petitioner's right was in ſir FOULK GREVILE, yet he claimed it not of right, but took a new patent; yet did not ſay that a peer in ſuch a caſe can ſurrender his right, but being in the favour of the Crown, ſuch acceptance might drown it: That ſir ROBERT WILLOUGHBY had not two baronies; that the heir male has a grant of the barony of Broke, which was ſir ROBERT WILLOUGHBY's title; that two perſons cannot have it, *ergo* the title being lord Broke, if the petitioner has a right to any, it is to be lord Broke or nothing; for they writ themſelves ſo in their wills, both father and ſon, and ſo they are ſtiled all along in the inquiſitions, and in the journals of the houſe; that there is a lord Broke in the houſe already, there cannot be two, ſo that if the title be allowed to the heir general, then the patent to the heir male is void, *&c.* and further inſiſted that the deſcent of the barony to coheirs, did merge or extinguiſh it or make it revert to the

Crown, and that it was in abeyance; that the notion of abeyance is, that it was in the clutches of the law, ſo as not to be taken out from thence by any power whatſoever, other than by a new creation.

To all which the petitioner's counſel replied very pertinently, though briefly, ſhewing that the honour could not be by patent, nor by writ with a limitation to the heirs male, for that there was iſſue male from each of the two ſir ROBERT WILLOUGHBYS, who yet were not barons; inſiſting upon the right of the peerage in general, and that in true conſtruction, the title was Willoughby of Broke, and prayed judgment for the petitioner.

After a long debate, it was reſolved upon the queſtion, without dividing, and without reporting the arguments on either ſide,

That ſir RICHARD VERNEY has a right to a writ of ſummons to parliament, by the title of lord Willoughby of Broke, and their lordſhips ordered a report to be drawn up, to be preſented to his Majeſty purſuant to the ſaid reſolution, which was preſented accordingly Febr. 17.

Whereupon he had his writ of ſummons directed RICHARDO WILLOUGHBY de Broke, chevalier, and on the 28th of Febr. 1695. delivered his writ to the houſe of peers, and was ſeated in the houſe, as a peer by deſcent, without ceremony, in the antient ſeat or place of his anceſtor, ſir ROBERT WILLOUGHBY, next above the lord Eure.

Touching the direction of the writ, by which ſir ROBERT WILLOUGHBY, knight, was ſummoned to parliament *anno* 7 HENRY VII. in theſe words, ROBERTO WILLOUGHBY de Broke, chevalier.

It is to be obſerved, that the title created thereby was lord Willoughby of Broke, for theſe reaſons.

1. For that the titles of all the antient barons by writ were nominal or perſonal, being ſummoned by their Chriſtian and ſirnames, without any addition of place, and very antiently the earls themſelves were called only by their Chriſtian names, as *comes* [a]HUGO, *comes* [b]ROGERUS, *comes* [c]RADULPHUS, *comes* GULIELMUS, *&c.* as in Domeſday book, *temp.* WILLIELMI *Conq.* and as in collection of inſtances, n. 1°.

[a] Earl of Cheſter.
[b] Earl of Shrewſbury.
[c] Earl of Norfolk.

2. The addition of places, came at firſt only to diſtinguiſh them from others of the ſame ſirname, but ſuch addition of place, was not part of their title, as in inſtances, n°. 2. *pars* 2da.

3. That though of later times, it hath been uſual to inſert in the writ, the addition of a place to the ſirname, even when there hath been no other peer of that ſirname, yet hath the title of honour been conſtantly that of the ſirname, and not of the place, as in inſtances, n°. 2. *pars* 1a.

4. That where the title is not the ſirname of the party, but ſome other name, either of an antient family, from whence the party is deſcended by heirs female, or ſome place of note, where the title hath its original by patent; in ſuch caſe the practice is to omit the ſirname of the party, in the direction of the writ, as in the inſtances, n°. 4.

5. That though the original title in all antient writs of ſummons, be the ſirname of the perſon ſummoned, yet in proceſs of time, ſome of thoſe local additions which were at firſt only to diſtinguiſh the perſon from ſome other of the ſame ſirname, have by corruption been introduced as the true title, as in inſtances, n°. 3.

But that the queſtion in ſuch caſes, is not *queſtio nominis* but *rei*, not what the title of the barony is, but whether ſuch a barony be a barony in fee ſimple, and whether the claimant be the lineal heir to the ſaid barony.

Numb. I.

Inſtances where the ſummons to parliament were nominal or perſonal only.

Anno 49 Hen. III.
Radulpho de Caymos.
Rogero de Sto Johanne.
Hugoni le Despenser.
Johanni *filio* Johannis.
Willo de Munchenſy.
Nicholao de Segrave.
Johanni de Veſcy.
Henrico de Haſtings.
Galfrido de Lucy.
Roberto de Roos.
Willielmo Marmyon.
Rogero Bertram.
Gilberto de Gaunt, *&c.*

Anno 5 Edw. I.
Marmaduco Thweng.
Johanni Engayne.
Hugoni Lovell.
Johanni de Wahull.
Hugoni de Nevil.
Hugoni de Pleſſetis.

Anno 22 Edw. I.
Rogero de Mowbray.
Walt. de Kincunbergh.
Baronis de Greyſtock.
Johan. *filio* Reginaldi.
Willielmo de Brayoſe.
Willielmo de Say.
Johanni Pevre.

Anno 22 Edw. I.
Herberto de Sto Quintino.
Johanni de Inſula.
Rogero de Huntingfield.
Rogero *filio* Osberti.
Michaeli de Poynings.
Petro Corbet.
Edmundo de Mortuo mari.
Hugoni Bardulf.
Theobaldo de Verdon.
Simoni Basset.
Nicholao de Meynill.
Johanni de Steyngreue.
Normanno de Arcy.
Willo de Kirkby, *&c.*

Numb. II.

Inſtances where baronies taking their original by writ of ſummons, and with a local addition following the ſirname, the title of honour has been the ſirname, and not the local addition.

Pars prima, In ſuch caſes where there was no ſuch title of honour in being before.

		The title was,
21 Hen. VIII.	Gilberto Tailboys de Kime, chevalier.	Lord Tailboys.
21 Hen. VIII.	Willielmo Sandys de Vyne, chevalier.	Lord Sandys,
25 Hen. VIII.	Thomæ Vaux de Harowdon, chevalier.	Lord Vaux.
25 Hen. VIII.	Johanni Hussey de Sleford, chevalier.	Lord Huſſey.
25 Hen. VIII.	Andreæ Windsor de Stanwell, chevalier.	Lord Windſor.
25 Hen. VIII.	Thomæ Borough de Gainsborough, chevalier.	Lord Borough.
28 Hen. VIII.	Thomæ Cromwel de Wimbleton, chevalier.	Lord Cromwell.
5 Edw. VI.	Willielmo Paget de Beaudeſert, chevalier.	Lord Paget.
1 Mariæ.	Edwardo North de Kirtling, chevalier.	Lord North.
14 Eliz.	Henrico Norreys de Ricot, chevalier.	Lord Norreys.
2 Jac. I.	Edwardo Denny de Waltham, chevalier.	Lord Denny.
5 Jac. I.	Thomæ Knivet de Eſcrick, chevalier.	Lord Knivet.
7 Jac. I.	Gerv. Clifton de Leighton Bromſwold, chevalier.	Lord Clifton.
31 Car. II.	Johanni Manners de Haddon, chevalier.	Lord Manners.

Pars ſecunda, where there was a title of honour in being before, in the like ſirname.

	The direction of the writ.	The title was,
49 Hen. III.	Radulpho Basset de Drayton. } Radulpho Basset de Sapcote. }	Lord Baſſet.
25 Edw. I.	Richardo Basset de Weldon.	Lord Baſſet.
22 Edw. I.	Willielmo de Ross de Ingmanthorp. } Roberto de Ross de Werk. } In diſtinction to the old lord Roſs, afterwards called lord Roſs of Hamlake.	Lord Roſs.

17 RIC. II. STEPHANO LE SCROPE de Maſham. Lord Scrope.
In diſtinction to RICHARD, lord Scrope of Bolton.

GREY of Wilton.
GREY of Codnor.
GREY of Rotherfield.
GREY of Rugmont.
GREY of Shurland.
GREY of Groby.
GREY of Wark.
25 CAR. II. GREY of Rolleſton. } Lord Grey.
In diſtinction to the lord Grey of Ruthyn.

14 HEN. IV. THOMÆ DACRE de Gilleſland. Lord Dacres.
In diſtinction to DACRES lord Dacres.

28 HEN. VIII. WALTERO HUNGERFORD de Haytisbury. Lord Hungerford.
In diſtinction to the old lord Hungerford, who was firſt ſummoned 4 HEN. VI.

39 ELIZ. THOMÆ HOWARD de Walden, chevalier. Lord Howard.
In diſtinction to the lord Howard of Norfolk, who was firſt ſummoned 49 HEN. VI.

31 CAR. II. THOMÆ BUTLER de Moor Park, chevalier. Lord Butler.
In diſtinction to lord Butler of Lanthony, then in the Duke of Ormond.

Numb. III.

Inſtances where the title of honour has been in the ſirname and not in the place, and yet by miſtake or corruption of time, ſuch peers have writ themſelves, or have been written by others, by the name of the place, and not by their true title of the ſirname.

1 MAR. WILLIELMO HOWARD de Effingham, chevalier, *magno admirallo Angliæ*, entred all along in the ſeſſions, *dominus Howard de Effingham*, or *dominus Howard admirallus*, without Effingham. But in 1 JAC. I. (19, 22 & 26 Mart.) entred *dominus Effingham*. In ſubſcribing the declaration May 4 1689. and Mar. 20. 1689. he writes Effingham.
But at the ſame time in the liſt of thoſe who took the oaths, he is entred FRANCIS, lord Howard of Effingham.

1 ELIZ. THOMAS, viſcount Howard de Bindon, was created viſcount Howard of Bindon, but is all along entred in the journals, Viſcount Bindon.

25 CAR. II. RICHARD lord Butler of Weſton (and earl of Arran) was created lord Butler of Weſton by patent Auguſt 27. 25 CAR. II. in theſe words, *prefatum* RICHARDUM *comitem Arran ad ſtatum*, &c. *domini Butler baronis de Weſton in com. noſtro Hunt. ereximus*. He is all along entred in the Journals, *dominus Butler de Weſton*.

1693. CHARLES, lord Butler of Weſton (and earl of Arran) is created in theſe words, *dilectum & fidelem noſtrum* CAROLUM BUTLER, *ad ſtatum &c. domini Butler baronis de Weſton in com. noſtro Hunt. ereximus*.

He is entred in the Journal Novemb. 12. 1694. *dominus Butler*, and *dominus Butler W.* In Novemb. 20. *dominus Butler*; In Novemb. 21, 23, & 26. *dominus Butler Weſt.* But in Decemb. 3, & 7. *dominus Weſton.*

Febr. 16. 1693. upon his ſubſcribing the declaration, he ſigns *Weſton.*

But is entred among thoſe who took the oaths the ſame day, CHARLES, lord Butler of Weſton.

The eldeſt ſon of the earl of Kent is commonly called lord Ruthyn, though the original of the barony was lord Grey, or lord Grey of Ruthyn.

The eldeſt ſon of the preſent earl of Suffolk is commonly called lord Walden, though the original of the barony was lord Howard of Walden.

1673. Contrariwiſe the preſent duke of Leeds was created *an.* 1673. lord Kiveton.

And the preſent marquis of Carmarthen ſigns Kiveton, and is written lord Kiveton, and yet his writ to this preſent parliament is, PEREGRINO OSBERNE, chevalier.

THOMAS MULTON, was firſt ſummoned by the name of THOMAS MULTON, afterwards in 1 EDW. II. to diſtinguiſh him from another THOMAS MULTON, he was ſummoned by the name of THOMAS MULTON of Egremond, and this produced the title of lord Egremond.

JOHN CHARLETON, was ſummoned by the name of JOHN CHARLETON, after for diſtinction ſake, in 30 EDW. III. he was ſummoned by the name of JOHN CHARLETON of Powis, and this produced the title of lord Powis.

Numb. IV.

Inſtances where the honour being in the local addition, the writ takes no notice of the ſirname.

		The direction of the writ.
36 HEN. VIII.	PAWLET, lord St. John.	WILL^o *domino St. John, chevalier.*
1 MARIÆ.	RATCLIFF, lord Fitzwalter.	THOMÆ *domino Fitzwalter.*
1, 2 PH. M.	NEVIL, lord Bergavenny.	HENRICO, *domino Bergavenny.*
1, 2 PH. M.	SUTTON, lord Dudley.	EDWARDO, *domino Dudley.*
30 ELIZ.	STANLEY, lord Strange.	FERDINANDO, *domino Strange.*
21 JAC. I. 15 CAR. I. & 13 CAR. II.	GREVIL, lord Broke.	FULCONI *Broke, de Beauch. Court.* FULCONI *Broke, chevalier.* ROBERTO *Broke, chevalier.*
21 JAC. I.	RICHARD, lord Kenſington.	HENRICO *Kenſington, chevalier.*
1 CAR. I.	ROPER, lord Tenham.	JOHANNI *Tenham, chevalier.*
1 CAR. I.	LEKE, lord Deyncourt.	FRANCISCO *Deyncourt, chevalier.*
15 CAR. I.	HOWARD, lord Mowbray,	HENRICO *Mowbray, chevalier.*
15 CAR. I.	MOUNTAGU, lord Kimbolton.	EDWARDO *Kimbolton, chevalier.*
15 CAR. I.	BELLASIS, lord Fauconberg.	THOMÆ *Fauconberg, chevalier.*
15 CAR. I.	LEIGH, lord Dunſmore.	FRANCISCO *Dunſmore, chevalier.*
15 CAR. I.	HERBERT, lord POWIS.	WILLIELMO *Powis, chevalier.*
13 CAR. II.	LENNARD, lord Dacres.	FRANCISCO *Dacres, chevalier.*
30 CAR. II.	YELVERTON, lord Grey.	CAROLO *de Grey, chevalier.*
32 CAR. II.	DARCY, lord Coniers.	CONIERS *de Coniers, chevalier.*
1 WIL. MA.	BOYLE, lord Clifford.	CAROLO *Clifford, chevalier.*
7 GUL. III.	MILDMAY, lord Fitzwalter.	CAROLO *Fitzwalter, chevalier.*

So that if it had been the deſign of the writ *an.* 7 HEN. VII. to have created ſir ROBERT WILLOUGHBY knight, lord Broke, the direction ought rather to have been ROBERTO *de Broke, chevalier*, according to the inſtances abovementioned.

Whilſt this claim was depending, the earl of Huntington wrote the following letter, which being curious is here inſerted.

Donington, Febr. 25. 1694.

SIR,

I Returned you my thanks for the favour of your letter of the 17th of the laſt month, in one of mine of the 30th, which yet I ought to think miſcarried, becauſe you did not mention the receipt of it in your laſt two, which came to my hand both together on Saturday: The effect of mine contained my thoughts of your preſent affair, to which I did, and do wiſh a ſucceſs anſwerable to your own deſire. The prerogative of the Crown in theſe caſes is extended very large, and yet grounded on the perſonal right of the parties; for where a barony is in coparcenerſhip, if the King pleaſes, no length of time bars the revival: The coheirs of MOWBRAY, duke of Norfolk were married, to HOWARD and BERKLEY. In HENRY VIth's time, the barony of Mowbray ſlept till the year 1640. that HENRY, lord Maltravers, was ſummoned by writ as lord Mowbray, in the life time of his father THOMAS, earl of Arundel. In the controverſy for the barony of Abergavenny, that title was adjudged to NEVILL, the heir male, and the title of lady Deſpenſer, being another barony veſted in that family, King JAMES I. by revival, gave to the lady FANE, the heir general, with precedency to the lord Abergavenny. CUTHBERT, lord Ogle, left two daughters, the counteſs of Shrewsbury and the lady Cavendiſh, which lady ſurviving her ſiſter, her ſon the duke of Newcaſtle aſſumed that barony, and is now moſt certainly lodged in the four coheirs. The barony of Roſs was firſt in CECIL, grandſon to the earl of Exeter, and he dying without iſſue, the duke of Buckingham enjoyed it as heir to FRANCIS, earl of Rutland; and though what I am now mentioning be not in this caſe, yet King JAMES I. gave to CHARLES HOWARD, earl of Nottingham, a patent for precedency during his life, as MOWBRAY, earl of Nottingham, held in the time of RICHARD II. with a *non obſtante* to the act of parliament. It was formerly held that a peer was to be ſummoned to two parliaments, otherwiſe his title was not hereditary; and yet in King CHARLES IId's time it was adjudged otherwiſe in the caſe of the barony of Clifton of Layton Bromſwold, who had but one ſummons, and was *felo de ſe*. Beſides, that King aſſumed another privilege, which was to ſummon a baron's eldeſt ſon into the ſecond barony of the father with the antient precedence, and was never done before till the caſe of the lord Coniers, ſon to the lord Darcy; all which Mr. KING can explain further to you. I do think it of infinite importance, eſpecially to peers where they have baronies in them by writ, to oppoſe this doctrine of a lapſe, becauſe it may happen a lord may die and leave two daughters, one of which may alſo die within a month after the father; in this caſe the title is drowned, although ſhe become a ſole heir, which is againſt the reaſon and end of the law. The lords have formerly been very tender and circumſpect of their privileges, for they have adjudged contrary to law and precedents that peers could not levy fines of their honours to the King, againſt the lord Purbeck, and this merely becauſe of the miſchiefs that might attend it; and I think thoſe lords you mention are extremely in the right to appear in this matter. My paternal barony is by writ, as well as thoſe deſcended to me by matches; and herein the duke of Norfolk is concerned. My lord Kent for his wife's barony of Lucas of Crudwel, which tho' by patent is made deſcendable to heirs general. The duke of Ormond for that of Butler of Moor Park, which comes to him from his father and not his grandfather. My lord Cornbury, my lord Rocheſter's nephew, for that of Clifton, and ſome of theſe lords I fancy do not take themſelves concerned; and therefore it might be proper to intimate ſome ſuch thing to them. I did in my laſt letter tell you, that if my lady ALETHEA HUNGERFORD, ſurvived her grandmother Pembroke, of which my lord Thanet can inform you, it is a parallel caſe to yours. I ſuppoſe your caſe does not come judicially before the lords, but by way of reference

ference from the King, upon which they are to give their opinions by of way report, and the judgment to be left to the King; and in this method the lords proceeded in parliament in the earl of Oxford's caſe, 1 CAR. I. which is worth your reading in JONES's reports. I am very ready to join with thoſe lords who are for ſupporting theſe fee ſimple baronies, and ſhall this day write to the earl of Ailesbury, who hath my proxy, that if it be neceſſary to acquaint the houſe, that as I am concerned in intereſt in the conſequence of this caſe, ſo my concurrence goes along with that opinion, that there is no lapſe therein. I have taken phyſick to day, and therefore I hope you will pardon my uſing another hand, being with much eſteem, Ante p. 173.

Your faithful humble ſervant,

Subſcribed
For JOHN VERNEY, eſq; at his lodgings in Kenſington.

Huntingdon.

Barony of *BERNERS.*

An abſtract of ſeveral records, original deeds, wills, and other authentick writings, to prove the claim and title of KATHARINE, wife of RICHARD BOKENHAM, of Weſton Mercate, in the county of Suffolk, eſq; to the barony of Berners.

Drawn up by PETER LE NEVE, eſq; Norroy King at Arms. 1717.

JOHN BOURCHIER, firſt lord Berners.

Ex rot clauſ. anno 33 HEN. VI. m. 36. dorſ.

REX cariſſimo conſanguineo ſuo RICHARDO, duci Eborum, ſalutem. Quia de aviſamento conſilii noſtri &c. quoddam parliamentum noſtrum apud Weſtm. nono die Julii, proxim' futur' teneri ordinavimus & ibidem vobiſcum *&c.* colloquium habere, &c. vobis, &c. Mandamus, &c. quod perſonaliter interſitis, &c. Teſte Rege apud Weſtm. 26. Maij. First ſummons to parliament. A.

Conſimilia brevia diriguntur ſubſcriptis ſub eâdem datâ, *viz.* JOHANNI, duci Norfolciæ, &c. EDMUNDO, comiti Richemund. &c. JOHANNI, vicecomiti Beaumond, chivaler, EDMUNDO GREY, de Ruthyn, &c. JOHANNI BURGCHIER de Berners, chivaler.

Ex rot. clauſ. anno 38 HEN. VI. m. 30. dorſ.

Rex cariſſimo conſanguineo ſuo HENRICO, duci Exon. ſalutem. Quia, &c. parliamentum apud Covent. 20 die Novembris proxim' futur' teneri ordinavimus. &c. vobis, &c. Mandamus, &c. quod perſonaliter interſitis, &c. Teſte Rege apud Leomynſtre, 19. die Octobris. Second ſummons. B.

Conſimilia brevia diriguntur ſubſcriptis ſub eâdem datâ, &c. JOHANNI, duci Norfolciæ, &c. JOHANNI BOURGCHIER, de Berners, chivaler, &c.

Ex rot. clauſ. an. 49 HEN. VI. m. 6. dorſ.

Rex cariſſimo conſanguineo ſuo GEORGIO, duci Clarentiæ, ſalutem. Quia, &c. parliamentum apud Weſtm. 26. die Novembris proxim' futur' teneri ordinavimus, &c. vobis, &c. mandamus, &c. quod perſonaliter interſitis, &c. Teſte rege apud Weſtm. 15. die Octobris. Third ſummons. C.

Conſimilia brevia diriguntur perſonis ſubſcriptis ſub eâdem datâ, JOHANNI, duci Norfolciæ, *&c.* JOHANNI BERNERS, chivaler.

Ex rot. clauſ. an. 1 EDW. IV. m. 34. dorſ.

Rex cariſſimo conſanguineo ſuo JOHANNI, duci Norfolciæ, ſalutem. Licet, &c. quoddam parliamentum noſtrum apud Weſt. quarto die Novembris, proxim' futur' Fourth ſummons. D.

futur' teneri volumus, &c. vobis mandamus, &c. quod ibidem personaliter interfitis, &c. Teste Rege apud Westm. 13 die Junij.

Consimilia brevia diriguntur personis subscriptis sub eâdem datâ, RICHARDO, comiti Warr. &c. JOHANNI de Audeley, armigero, &c. JOHANNI BOURCHIER de Berners, chivaler, &c.

Ex rot. clauf. an. 2 EDW. IV. m. 3. dorf.

Fifth summons. E. Rex cariffimo conſanguineo ſuo RICHARDO, comiti War. ſalutem, &c. Quia quoddam parliamentum noſtrum apud Weſtm. 29. die Aprilis proxim' futur' teneri ordinavimus, &c. vobis mandamus, &c. quod dictis die & loco, perſonaliter interſitis, &c. Teſte Rege apud Weſtm. 28. Februarij.

Conſimilia brevia diriguntur perſonis ſubſcriptis ſub eâdem datâ, *viz.* WILLIELMO, comiti Arundel. &c. JOHANNI, domino Berners, chivaler.

Ex rot. clauſ. an. 6 EDWARD. IV. m. 1. dorſ.

Sixth summons. F. Rex cariſſimo fratri ſuo GEORGIO, duci Clarentiæ, ſalutem. Quia, &c. quoddam parliamentum noſtrum apud Weſtm. tertio die Junij proxim' futur' teneri ordinavimus, &c. vobis &c. mandamus quod, &c. dictis die & loco perſonaliter interſitis, &c. Teſte Rege apud Weſtm. 28. die Februarij, &c.

Conſimilia brevia diriguntur perſonis ſubſcriptis ſub eâdem datâ, *viz.* JOHANNI, duci Norfolciæ, &c. JOHANNI BERNERS, chivaler, &c.

Ex rot. clauſ. anno 9 Regis EDWARDI IV. m. 23. dorſ.

Seventh summons. G. Rex cariſſimo fratri ſuo GEORGIO, duci Clarentiæ, ſalutem. Quia, &c. quoddam parliamentum noſtrum apud Eborum 23. die Septembris proxim' futur' teneri ordinavimus, &c. vobis, &c. mandamus, &c. quod, &c. perſonaliter interſitis, &c. Teſte Rege apud Weſtm. 18. die Auguſti, &c.

Per breve de privato ſigillo & de dat. &c. RICHARDO, duci Glouceſter. &c. JOHANNI BERNERS, chivaler.

Ex rot. clauſ. an. 12 Regis EDWARDI IV. m. 22. dorſ.

H. Eighth summons. Rex cariſſimo fratri ſuo GEORGIO, duci Clarentiæ, ſalutem. Quia, &c. quoddam parliamentum noſtrum apud Weſtm. ſexto die Octobris prox. futur. teneri ordinavimus. &c. vobis, &c. mandamus, &c. quod, &c. perſonaliter interſitis nobiſcum, ac cum prelatis, magnatibus, &c. tractat. &c. conſilium impenſ. &c. Teſte Rege apud Weſtm. &c. 19 die Auguſti.

Conſimilia brevia diriguntur perſonis ſubſcriptis ſub eâdem datâ, *viz.* RICHARDO, duci Gloue. &c. WILLIELMO, Comiti Arundel. &c. JOHANNI BOURGCHIER de Berners, chivaler.

The will of the firſt lord Berners. In the name of God Amen, the 21 of the month of March, the year of the incarnation of our Lord God 1473. and in the yeaf of the reign of King EDWARD the IVth, the fourteenth, I JOHN BOURGCHIER, knight, lord Barneſſe, being in my gode and hole mind, make, diſpoſe and ordeyn my preſent teſtament in this wiſe. Firſt, my ſoul to Almighty God, *&c.* and my body to be buried in the chappel of the Holy Rode, within the monaſtry of St. Peter of Cherteſey. My debts to be paid, *&c.* to the ſaid monaſtry for my ſepulture, *&c.* and to pray for my ſoul, and for dame MARGERY my wife, our children, *&c.* a croſſe of ſilver, and gilt, *&c.* to the value in all of forty pound. Alſo I bequeth to my wife, firſt two cups of gold, *&c.* Alſo I bequeath to THOMAS BOURGCHIER, my ſon, two pots of ſilver, and gilt, *&c.* The reſidue of my goods, jeuells, *&c.* after my debts paid, *&c.* I holy giſ and bequeath to dame MARGERY, my wife, *&c.* And of this my teſtament, I make and ordeine myn executours, my wife to be my chief executrice, THOMAS BOURGCHIER, my ſon, and JOHN YOUNG, my ſervant, alſo I beſeeche my reverend fader in God my lord cardinall to ſee my will performed, and to make a lawful eſtate to dam MARGERY, my wife, in all the lands in Staffordſhire for term of her life, and after her deceaſe to my right heirs, *&c.* In witneſſe, *&c.* I have ſet to my ſeale with myne own hand, the day and year aboveſaid.

I.

E. Reg. cur. prær. Cant. extr. Reg. Wattyſ.

Probatum fuit preſens teſtam. 21. die menſis Junij an. Dom. 1474. executoribus.

Inquiſitio.

Inquisitio indentur' capta apud Chelmesford in com. Essex. Ultimo die Aprilis anno regni regis EDWARDI IV. post conquestum sexto decimo coram, &c. per sacramentum, &c. Qui dicunt super sacramentum suum quod JOHANNES BOURGCHIER de Berners, miles, non tenuit die quo obiit terras in Dominico, &c. sed dicunt quod THOMAS, archiepiscopus Cantuariensis, &c. JOHANNES FRAY & JOHANNES DOREWARD fuerunt seisiti de manerlis de Estle, Chigenhale-Taney, & Chigenhale-Zoyne, Norton, Southorp, Northorp, Berners Marsh & Polemersh in feodo, &c. Et per indenturam datam 10 Febr. 39 HEN. VI. Tradiderunt præfato JOHANNI BOURGCHIER domino de Berners & MARGERIÆ tunc uxori & heredibus masculis, &c. remanr' HENRICO comiti Essex & heredibus masculis, remanr' WILLIELMO BOURGCHIER, nuper domino Fitzwaryne, & heredibus masculis, &c. remanr' rectis heredibus ANNÆ, nuper comitissæ Stafford, &c. Et prædictus JOHANNES obiit de tali statu seisitus, & prædicta MARGERIA ipsum supervixit, &c. Et juratores dicunt quod finis levat. fuit octabis S. Johannis Baptistæ vicesimo regni HEN. VI. manerii & advocac' ECCLESIÆ BEAUMONT, & manerii Cripping in Essex, per quem limitat' fuerunt eisdem JOHANNI & MARGERIÆ & heredibus de corporibus eorum, remanr' rectis heredibus MARGERIÆ, & sic inde seisiti habuerunt exitum inter eos HUMFRIDUM de corporibus suis legitime procreatum; idemque HUMFRIDUS habuit exitum JOHANNEM de corpore suo legitimè procreatum adhuc superstitem, & obiit in vita prædictorum JOHANNIS BOURGCHIER & MARGERIÆ; & postea JOHANNES prædictus obiit, & MARGERIA uxor eum supervixit, &c. Et juratores dicunt quod prædictus JOHANNES BOURGCHIER obiit seisitus manerii de Berners Roding. &c. vicesimo primo die Maij anno regni regis EDWARDI IV. quartodecimo; & quod prædicta MARGERIA ipsum supervixit, & obiit die lunæ proximo ante festum Natalis Domini ultimo præterito. Et quod prædictus JOHANNES filius HUMFRIDI est consanguineus & heres propinquior tam prædicti JOHANNIS BOURGCHIER de Berners, militis, quàm prædictæ MARGERIÆ, *viz.* filius prædictus HUMFRIDI filii prædicti JOHANNIS & MARGERIÆ, & est ætatis octo annorum & amplius, &c. datum ultimo Aprilis anno sextodecimo supradict.

Ex Bundella escheat anni 15 Edw. IV. n. 35. Inquisitio post mortem JOHANNIS primi domini Berners.

Inquisition after the death of the first lord Berners, proving him, his lady MARGERY, his son HUMFRY, and grandson JOHN.

K.

M.

L.

MARGERY, wife of JOHN, first lord Berners.

Memorand. quod fuit quidam EGIDIUS de Berners, miles, tempore regis RICHARDI primi, qui habuit RADULPHUM de Berners, militem, tempore regis JOHANNIS, qui habuit RADULPHUM de Berners, militem, qui duxit in uxorem CRISTINAM sororem domini HUGONIS de Wyndsor, domini Stanwell, & de Westhorsley, tempore regis HENRICI filii regis JOHANNIS, & dedit dicto RADULPHO de Berners & CRISTINÆ uxori suæ & heredibus eorum manerium dictum de Westhorsley; & habuerunt exitum inter eos legal' procreatum EDMUNDUM de Berners, militem, tempore regis EDWARDI filii regis HENRICI, & dictus EDMUNDUS de Berners habuit JOHANNEM de Berners, militem, tempore regis EDWARDI filii regis EDWARDI duxit in uxorem ELIZABETHAM, filiam JOHANNIS STONER, militis, capitalis justiciari domini Regis, qui talliavit maneria de Westhorsley Iseldon & Iclyngham & heredibus inter eos legal' procreat'. Et dictus JOHANNES filius EDMUNDI & ELIZABETHÆ habuit exitum JOHANNEM, militem, armigerum, & RADULPHUM, clericum & doctorem utriusque juris, tempore regis EDWARDI tertii. Et dictus JOHANNES, miles, duxit in uxorem KATHERINAM exitum JACOBUM de Berners, militem, qui duxit in uxorem ANNAM filiam JOHANNIS BOWES de com. Southampton, & habuerunt exitum RICHARDUM de Berners, armigerum, ISABELLAM, quæ morlebatur in ætate duodecim annorum tempore regis RICHARDI. Et anno duodecimo dictus JACOBUS de Berners fuit decapitatus; & dictus RICHARDUS duxit in uxorem PHILIPPAM filiam EDWARDI DALYNGRYNGE, militis, tempore regis HENRICI quarti, & habuerunt exitum MARJORIAM heredem, quæ nupta fuit JOHANNI FREBY, comptrollor. regis HENRICI sexti qui obiit sine exitu. Et dicta MARJORIA nupta fuit JOHANNI BOURGCHIER, militi, domino de Berners, qui habuer' exitum

Ex pervetust carta.

P.

itum ANNAM, HUMFRIDUM, THOMAM, ELIZABETHAM & JOHANNEM, & dicta ANNA moriebatur in ætate quinque annorum. Et dictus HUMFRIDUS duxit in uxorem ELIZABETHAM filiam & heredem FREDERICI TYLNEY, armigeri. Et dictus THOMAS jam vivit. Et dictus HUMFRIDUS BOURGCHIER, filius & heres dicti domini de Berners, & ELIZABETHA uxor sua prædicta, nunc uxor THOME HOWARD, comitis de Sur. habuerunt exitum JOHANNEM BOURGCHIER, dominum de Berners, & postea die paschæ apud Bernet cum rege EDWARDO quarto interfectus est, qui quidem dominus de Berners duxit in uxorem KATHERINAM filiam JOHANNIS HOWARD, ducis Norfolciæ, & habuerunt exitum, &c.

Note. The time when this pedigree was writ. was in K. H. VII. reign.

Omnibus, &c. THOMAS, permissione divina titulo S. CIRIACI sacrosanctæ Romanæ ecclesiæ presbyter cardinalis, Cantuariensis archiepiscopus, totius Angliæ primas & apostolicæ sedis legatus, salutem, &c. Sciatis nos dimisisse, & confirmasse MARGERIÆ, nuper uxori JOHANNIS BOURGCHIER, militis, domini de Berners jam defuncti maneria nostra de Halghton, Offley & Doxey in com. Staffordiæ, ac omnia terr', &c. redditus & servitia in Springfield, Borcham & parva Waltham in com. Essex habend', &c. MARGERIÆ pro termino vitæ suæ teman' heredibus masculis de corpore præfati JOHANNIS BOURGCHIER, militis, domini de Berners legitime procreat', &c. dat' vicesimo die Junij, anno regis EDWARDI IV. quartodecimo.

Ex autog. M.

Omnibus, &c. THOMAS HOWARD, armiger, & ELIZABETHA uxor ejus, salutem, &c. Sciatis nos ordinasse, &c. JOHANNEM ROOS yeoman nostrum verum & legitimum attornatum ad recipiendum pro me prefata ELIZABETHA, &c. de MARGERIA BOURGCHIER domina de Berners vidua nuper uxore JOHANNIS BOURGCHIER, militis, domini de Berners, &c. plenam possessionem manerii & advocationis eccl' de Beaumond in com. Essex & manerii & advocationis eccl' Iklyngham in com. Suff. habend' & tenend' mihi prefate ELIZABETHÆ & heredibus masculis de corpore meo, per HUMFRIDUM BOURGCHIER, militem, nuper virum meum procreat' secundum vim formam & effectum cujusdam carte indentate mihi facte per prefatam MARGERIAM, &c. Dat. quartodecimo die Novembris anno regni regis EDWARDI quarti, &c. quintodecimo.

Ex autog.

N.

HUMFRY BOURCHIER, son of JOHN, first lord Berners, his Epitaph.

In the collegiate church of St. Peter Westm. in St. Edmund's chappel.

HIC Pugil ecce jacens Bernet, fera Bella cupiscens,
Certat ut Æacides, sit saucius undique Miles,
Vi cecidit, Mars porrigit arma cruore
Sparsim tincta rubent, dolor en lachrymabilis hora
Lumine nempe cadit, quo Christus morte resurgit,
BOURCHIER HUMFRIDUS, clara propagine, dictus.
EDWARDI Regis qui tertius est vocitatus,
JOH, Dni Berners, proles & parvulus heres:
Quartus & EDWARDUS Belli tenet ecce Triumphum,
Quo perit HUMFRIDUS ut Regis Vernula verus,
Cyronomon mensæ Sponsæ Regis fuit iste,
ELIZABETH. Sibi sic sua Virtus crescit honore;
Armis conspicuus, quondam claruque Britannis
Hic fuit. Ut cœlis vivat, deposcite Votis.

O. Antiquities of St. Peter's Westminster. Edit. 1715. p. 49. WEAVER's funeral monuments, p. 482.

To all to whom this indentur tripartite shall come, we THOMAS, archbishop of Canterbury and primate of England, and JOHN PRYSOTE, the chief justice of the Comyn Place, sendeth greeting in God. Whereas divers variances, &c. was late had between JOHN BOURGCHIER, knight, lord Berners, HUMPHRY BOURGCHIER, squier, and ELIZABETH his wife, Daughter to FREDERICK TYLNEY, squier, of the oon party, and ROBERT TILNEY, squier, and HUGH TYLNEY, uncles to the said ELIZABETH, &c. of all the manners, meses, lands and tenements, which were late PHILIP TYLNEY, late of Lyncoln Chanon, &c. In witness, &c. dated 14th of Feb. 33 HEN. VI.

P.

Ex vetusta copia ejusdem.

Sciant,

Sciant, &c. quod ego JOHANNES ODEHAM, clericus, demiſi, feoffavi, liberavi & hac carta indentata confirmavi dominæ ELIZABETHÆ BOURGCHIER, viduæ, filiæ & heredi FREDERICI TYLNEY, filii & heredis PHILIPPI TYLNEY, nuper canonici & reſidentiarii eccleſ. cathedralis Lincoln, ac nuper uxori HUMFRIDI BOURGCHIER, militis, filii & heredis JOHANNIS BOURGCHIER, militis, domini de Berners, manerium de Fyſhetwyk cum pertinen' in com. Staffor.d. &c. habend. & tenend. &c. prænominat' domin' ELIZABETH. BOURGCHIER ad terminum vitæ ſuæ, &c. Teſtibus JOHANNE STANLEY, milite, &c. Dat. octodecimo die Februarij, anno regni regis EDWARDI quarti poſt conqueſtum undecimo. Carta dat. 18. Feb. 11 Edw. IV. Ex autogr. Q.

This endenture made the 12. day of the month of February, the 15 of King EDWARD the IV. Betwixt the moſt reverend fader in God THOMAS, by the grace of God cardinal of the holy church of Rome, archbiſhop of Canterbury and primate of all England, and THOMAS BOURGCHIER, ſquier, ſon of JOHN BOURGCHIER, knight, late lord Berners, on the oon partie, and THOMAS HOWARD, ſquier, and dame ELIZABETH BOURGCHIER his wife, late the wife of HUMFREY BOURGCHIER, knight, on that other partie. Whereas, the ſaid HUMFRY and dame, ELIZABETH, had iſſue betwixt them, oon JOHN BOURGCHIER, now lord Berners MARGARET and ANNE, which JOHN, MARGARET and ANNE, been full tender age, and in the keeping and guiding of the ſaid THOMAS HOWARD and ELIZABETH, and found at their chargeand coſt, &c. Feb. 12. 15 Edw. IV. R. Ex autogr.

On the laſt of February, 11 year of king EDWARD the IVth, the ſaid ELIZABETH BOURGCHIER made her will by indenture, ſealed with her ſeal; wherein ſhe calls her ſelf daughter and heir of FREDERICK TYLNEY, ſon and heir of PHILIP TYLNEY, ſometime chanon and reſidentiary of Lincoln; late wife of HUMFRY BOURGCHIER, knight, ſon and heir of JOHN BOURGCHIER, lord Berners, knight, in pure widdow-hood of all her manners, lands, &c. whereof JOHN SAY, knight, and others were enfeoft in Norfolk, Suffolk, Cambridgeſhire, Lincoln, York and Stafford, to the uſe of dame ELIZABETH, to perform her will; deſiring her feoffees to give all the ſaid maners, lands, &c. except Stonham, Aſpale, Eſt Bergholt, and Cowling in Suffolk to the ſaid ELIZABETH only, or to ELIZABETH, and the perſon with whom ſhe ſhall marry, for term of their lives, without waſt, with the reverſion in the feoffees, &c. MARGARET and ANNE, her daughters, one hundred pounds each. Firſt will of Eliz. Tylney. Ex autog. S.

The ſaid ELIZABETH made a ſecond will, dated at London the 8th day of May, the yere MCCCCLXXII. by the name of dame ELIZABETH HOWARD, daughter and heir of FREDERICK TYLNEY, and late the wife of HUMFRY BOURGCHIER, knight, ſonne and heir of JOHN BOURGCHIER, lord Berners, knight, and now the wife of THOMAS HOWARD, ſonne and heir of JOHN, lord HOWARD, knight, made, and by me the ſaid ELIZABETH, openly declared at London, of all the manners, lands, &c. in Norfolk, Suffolk, Cambridge, Lincoln, York and Stafford; whereof ſir JOHN SAY, knight, and others feoffees, wherein ſhe required to convey to her foreſaid beloved husband THOMAS HOWARD, after her deceaſe for his life only, half dole of them, and the other half to the like uſes; and if JOHN BOURGCHIER her ſon dye without iſſue, during her and her husband's life, then MARGARET and ANNE to have none of the 200 pounds by her other will. Second will, May 8. 1472. Ex autog. T.

The ſaid ELIZABETH, being then ducheſſe of Norfolk, made her laſt will, dated the 6th of November, 1506. wherein ſhe bequeaths her ſoul to God, St. MARY, St. THOMAS of Canterbury, and St. ANNE; her body to buried in the nuns quire of the Minoreſſes without Aldgate, London, neer the place wher ANNE MONGOMERY lyeth, &c. 100 marks to be diſtributed to the poor of White-Chappel and Hackney, at ſeven pence each, &c. her executors ſir ROBERT LOVELL, ſir EDMUND JERMY, knights, Mr. THOMAS COSYN, doctor of divinity, Mr. JOHN TALBOT, doctor of phyſick, and Mr. WILLIAM HOLME, clarke. Dutcheſſe of Norfolk's will, Nov. 6. 1506. other goods. U. Regiſtr. A. deane in cur. Prerog. Q. 25.

Proved at Lambeth, June 28. 1507.

JOHN, second lord Berners.

Oct. 10. 7 Hen. VII. Ex autog. Livery to John, second lord Berners. W.

HENRICUS, Dei gratia Rex Angliæ & Franciæ & dominus Hiberniæ, omnibus, &c. Sciatis quod de gratiâ noſtrâ ſpeciali, &c. conceſſimus & licentiam dedimus pro nobis & heredibus noſtris quantum in nobis eſt, JOHANNI BOURGCHIER de Berners, militi, filio & hered. HUMFRIDI BOURGCHIER, militis, ac conſanguineo & heredi JOHANNIS BOURGCHIER de Berneux, militis, & MARGERIÆ, nuper dominæ de Berneux uxoris ejus, ac conſanguineo & hered. alterius ipſorum JOHANNIS & MARGERIÆ, viz. filio & heredibus HUMFRIDI BOURGCHIER, militis, filii & hered. prædictorum JOHANNIS & MARGERIÆ, qui quidem tam prædictus HUMFRIDUS BOURGCHIER, ac prædictus JOHANNES BOURGCHIER de Berners, miles, pater prædicti HUMFRIDI quam dicta MARGERIA nuper dominæ de Berners, mater dicti HUMFRIDI de EDWARDO, nuper Rege Angliæ quarto, diebus quibus obierunt tenuerunt in capite. Quodque prædictus JOHANNES BERNERS de Berners, miles, filius prædicti HUMFRIDI in continente abſque probatione ætatis ſuæ & abſque aliqua liberatione ſeu proſecutione hereditatis ſuæ, ſeu alicujus inde percelle extra manus noſtras in cancellaria noſtra, &c. in omnia caſtra, honores, dominia, manerla, terras, tenementa, quæcunque infra regnum Ang. de quibus predictus HUMFRIDUS, vel JOHANNES & MARGERIA, vel aliquis alius anteceſſorum dicti JOHANNIS BERNEUX, filii dicti HUMFRIDI, &c. intrare, retinere, habere, & tenere poſſit, &c. In cujus rei teſtimonium has ſitteras noſtras fieri fecimus patentes. Teſte meipſo apud Weſtm. decimo die Octobris anno regni noſtri ſeptimo.

De veniendo ad parliamentum clauſ. anni 11 Regis HEN. VII.

11 Hen. VII. X. Rex prærchariſſimo primogenito noſtro ARTHURO, Principi Walliæ, ſalutem. Quia, &c. quoddam parliamentum noſtrum apud Weſtm. 14. die Octobris prox' futur' teneri ordinavimus, &c. Vobis mandamus, &c. quod perſonaliter interſitis, &c. Teſte apud Weſtm. 12. die Auguſti.

Conſimilia brevia diriguntur perſonis ſubſcriptis ſub eadem datâ, viz. duci Eborum, &c. THOM. marchioni Dorſet. THOM. comiti Arundell, &c. EDWARDO HASTYNGES de Hungerford, chivaler, &c. JOHANNI BOURGCHIER de Berners, chivaler, &c.

Rot. clauſ. anni regni Regis HEN. Sept. duodecimi.

12 Hen. VII. Second ſummons to parliament. Y. Rex prærchariſſimo primogenito noſtr. ARTHURO, Principi Walliæ, ſalutem. Quia, &c. quoddam parliamentum noſtrum apud Weſtm. ſextodecimo die Januarij prox' futur' teneri ordinavimus, &c. vobis mandamus, &c. quod perſonaliter interſitis, &c. Teſte apud Weſtm. 20. die Novembris.

Conſimilia brevia diriguntur perſonis ſubſcriptis ſub eâdem datâ, viz. HEN. duci Eborum, THO. marchioni Dorſet, THO. comiti Arundell, &c. HEN. CLIFFORD, &c. JOH. BURGCHIER de Berners, chivaler, THO. ORMOND de Rochford, chivaler, &c.

Rot. clauſ. anni regni Regis HEN. octavi primi.

1 Hen. VIII. Third ſummons. Z. Rex cariſſimo conſanguineo ſuo EDWARDO, duci Bucks, ſalutem. Quia, &c. quoddam parliamentum noſtrum viceſimo primo die Januarij prox' futur' teneri ordinavimus, &c. Vobis mandamus, &c. quod perſonaliter interſitis, &c. Teſte Rege apud Weſtm. ſeptodecimo die Octobris.

Conſimilia brevia diriguntur THO. marchioni Dorſet, & HEN. comiti Northumbr. &c. HEN. CLIFFORD de Clifford, chivaler, &c. JOH. BOURCHIER de Berners, chivaler.

Rot. clauſ. anni regni regis HEN. octavi tertii.

Fourth ſummons, 3 Hen. VIII. A a Rex cariſſimo conſanguineo ſuo EDWARDO, duci Bucks, ſalutem. Quia, &c. quoddam parliamentum noſtrum apud Weſtm. quarto die Februarij prox' futur' teneri ordinavimus, &c. vobis mandamus, &c. quod perſonaliter interſitis, &c. Teſte rege apud Weſtm. 23 die Novembr.

Conſimilia brevia diriguntur THO. marchioni Dorſet, HEN. comiti Northumbriæ, HEN. CLIFFORD de Clifford, chivaler, JOHANNI BOURCHIER de Berners, chivaler, &c.

Rot. clauſ. anni regni regis HEN. octavi ſexti.

Rex cariſſimo conſanguineo ſuo EDWARDO, duci Bucks, ſalutem. Quia, &c. quoddam parliamentum noſtrum apud Weſtm. quinto die Februarij prox' futur' teneri ordinavimus, &c. vobis mandamus, &c. quod perſonaliter interſitis, &c. Teſte Rege apud Weſtm. 26. die Novembris. Fifth ſummons. 6 HEN. VIII. B b

Conſimilia brevia diriguntur perſonis ſubſcriptis ſub eâdem datâ, viz. THOM' duci Norf. CAROLO, duci Suff. &c. THOMÆ, marchioni Dorſ. THOM' comiti Arundell, &c. EDWARDO STANLEY de Mountegell, chivaler, &c. JOHANNI BOURGCHIER de Berners, chivaler, &c.

Rot. clauſ. anni regni regis HEN. octavi viceſimi primi.

Rex præchariſſimo conſanguineo ſuo HENRICO, duci Richmon. & Somerſet, ſalutem. Quia, &c. quoddam parliamentum noſtrum, apud civit. noſtram London. tertio die Novemb. prox' futur' teneri ordinavimus, &c. vobis mandamus, &c. quod perſonaliter interſitis, &c. Teſte Rege apud Weſtm. nono die Auguſti an. regni ſui 21. Sixth ſummons. 21 HEN. VIII. C c

Conſimilia brevia diriguntur perſonis ſubſcriptis ſub eâdem datâ, viz. THOMÆ, duci Norf. &c. THO. marchioni Dorſet, &c. WILL. comiti Arundell, &c. GEORGIO NEVILLE de Burgavenny, chivaler, &c. JOHANNI BOURGCHIER de Berners, chivaler, &c.

In the name of God Amen, the third day of March, in the year of our Lord God, a thouſand five hundred thirty and too; I JOHN BOURCHIER, knt. lord Barnes, the King's deputy-general of the town and marches of Caleys, &c. make this my preſent teſtament and laſt will, in manner and form following. Firſt, I bequeath my ſoul to Almighty God, *&c.* and my body to be buried in the pariſh church of our lady St. Mary the virgin, of the ſaid town of Caleys; within the chauncell of the ſame church, *&c.* Alſo, in moſt humbleſt manner, I beſeech the King's highneſſe, to be ſo good and gracious a lord unto me; as for the five hundred pounds ſterling that I owe unto his grace, payable in five years, to accept after the deceaſe of my lady my wief, the manners of Houghton, Offley and Doxey, in the county of Stafford, to have and to hold the ſame maners, with the appurtenences to his highneſs, his heirs and aſſignes, *&c.* His grace paying for the ſame unto mine executors over and above the ſaid 500 *l.* ſterling, ſuch ſome of money as it ſhall pleaſe his highneſs, for and towards the performance of this my laſt will and teſtament, *&c.* Alſo I will, that mine executors of ſuch goods, as I ſhall leave unto them, do pay ſoche of my debts as ſhall appear good and true, which I have not ſet over in the King's books, or otherwiſe provided for the payment of the ſame. *Item,* I give unto HUMFRY BOURCHIER my ſon, my gown of tawny damask, furred with jennets, and my coat of black velvet furred with marterns, *&c.* with ſix pair of alman rivets compleat, with ſplints, ſallets, and all things thereunto belonging. Alſo I will, that all ſuch gifts and grants of plate, goods and ſtuff, as I have made and delivered unto JAMES BOURCHIER my ſon, and alſo unto FRANCIS HASTINGS, eſq; and JANE his wife, that they hold and enjoy the ſame, *&c.* *Item,* I give and bequeath to the ſaid FRANCIS HASTINGS, and JANE his wife, *&c.* my great tenement I dwell in in Caleys. *Item,* I will that my executors doe ſell all ſuch my revertion and uſe of revertion, of the manor of Sende in Wilts; of the which manner, after my deceaſe WILLIAM SHERINGTON, gent. and URSULA his wife, my daughter, have the uſe to them, and to their heirs of their two bodies, lawfully begotten, except ten pounds ſterling by the year of the ſame manner; of which ten pounds ſterling after my deceaſe, GEORGE BOURCHIER my ſonne ſhall have the uſe to him, and to his heirs of his body, lawfully begotten: as by indenture tripartite between them and me, thereof made more plainly appear, and the money thereof coming, my executors to diſpoſe for my ſoul's welth, *&c.* FRANCIS HASTINGS and ROBERT ROLF, recorder of Calais, executors: To ROBERT, ten marks ſterling; I make my lord EDMUND HOWARD, my brother, overſeer of the ſame my preſent teſtament, to whom my brother, I give a ſtand-

JOHN BOURCHIER, knt. deputy of Calais, his will. D d

HUMFRY BOURCHIER, baſtard ſon.

JAMES BOURCHIER, baſtard ſon.

WILLIAM SHERINGTON, and URSULA his wife baſtard daughter.

GEORGE BOURCHIER, baſtard ſon.

ing cup of ſilver, and gilted, weighing 22 ounces, *&c.* Witneſs whereof, to this my preſent teſtament and laſt will, I have ſet my ſeal of arms, and ſubſcribed my name the day and year firſt above writ, in the preſence of the ſaid lord EDMUND my brother, and ſir EDWARD RINGESLEY, knt. high marſhal of Calais, ſir EDWARD BRINDELYOLYN, paroche preſt of the aboveſaid church of our lady; our my ghoſtly father, ſir WILL. PETOUS my chaplain, *&c.*

Ex ipſa exemplificatione.

Will proved by FRANCIS HASTINGS, 4. Febr. 1533.

KATHARINE, wife of JOHN laſt lord Berners, daughter of JOHN, duke of Norfolk, by MARGARET his ſecond wife, daughter of ſir JOHN CHEDWORTH, knight.

To prove this, ſee pedigree of HOWARD, DUGDALE's baronage, vol. II. p. 267. MILLS 521. VINCENT, on BROOK, p. 354.

To prove her joynture in the maners of Houghton, Offley, and Doxey in the county of Stafford. See the will of her husband Dd. the deed of joynture, a copy whereof under the hand of ſir THOMAS KNYVET, dated 1 May 7 HEN. VII. and two deeds 24 and 25 HEN. VIII. as follow,

Ex autogr. Sciant preſentes & futuri quod ego JOHANNES BOURCHIER, miles, dominus Berners, dedi, conceſſi & hâc preſenti cartâ mea confirmavi THOMÆ comiti Surr', WILLIELMO HUSSE, militi, capitali juſtic' domini Regis ad plita' coram ipſo tenend' JOHANNI WYNDHAM, militi, HENRICO MARNEY, EDMUNDO DANIEL, JOHANNI TIMPERLEY, armigeris, &c. Maneria mea de Offley, Haughton, & Doxey in com. Staff. cum wardis, &c. eſchaetis, harriettis advocat' eccleſiarum cum univerſis & ſingulis eorum pertinen' habend', &c. prædict. comiti Surr. &c. Ee heredibus & aſſignat' eorum imperpet', &c. Et ulterius noveritis me, &c. feciſſe, ordinaſſe, &c. RICHARDUM CRADOKE de Stafford merchant, & GEORGIUM DANYEL, jun. de Stoke juxta Nayland meos veros attornatos, &c. ad intrandum, &c. Nec non ad deliberand' ſeiſinam, &c. In cujus, &c. Dat. apud Offley præd. primo die Maij anno regni regis HEN. ſeptimi ſeptimo. Indorſed thus, *viz.*

Be it known that this preſent deed by me within named JOHN lord Berners, made to the within named THOMAS, earl of Surrey and others, and the ſeiſin thereupon had and delivered, is made and delivered to the intent enſueing, that is to wyte, That the ſaid earl and other cofeoffees ſhall ſtand and be feoffees of the mannors within ſpecified, and their appurtenances to the uſe of me the ſaid lord Berners, and of KATERYNE my wife, term of life of the ſame KATERYNE, and after the deceaſe of the ſame KATERYNE, the ſaid earl of Surrey and others within named, to ſtand and be feoffees of me the ſaid lord Berners and of myne heirs.

Ff To all men be it known by theis preſents, that I dame KATERYNE BOURGCHIER, widdow, late the wyff of ſir JOHN BOURGCHIER, iknight, lord Barnes, have ordayned, conſtituted and made my well beloved in Criſt JOHN APHOWELL, my true and lawful deputie and bayly of and in all my mannors, lands and tenements, lyeing and being in Staffordſhire, which I hold as and for my joynter, *&c.* To hold, *&c.* the ſaid office of balyſhip from the feſt of the Ex autogr. annunciation of our Lady the Virgin, *&c.* In witneſs, *&c.* Given the eighth day of the moneth of April, the xxivth year of the reign of HENRY the VIIIth. By me KATERYNE lady Barnes.

Omnibus, &c. KATERINA BOURGCHIER, domina Berners, vidua, relicta nuper JOHANNIS BOURGCHIER, militis, domini Barners vera patrona eccleſiæ parochialis de Houghton Coventr' & Lich' dioceſis, ſalutem, &c. Noveritis me præfatam KATERINAM dediſſe, conceſſiſſe, &c. JOHANNI APOWELL dilecto meo ſervienti, & WILLIELMO TAYLOR, primam & proximam advocationem rectoriæ eccleſiæ parochialis de Houghton prædict. &c. In cujus rei teſtimon' ſigillum Gg meum preſentibus appoſui. Dat. 23 die menſis Maij anno regni regis HENRICI octavi viceſimo quinto. By me KATERYNE, lady Barnes.

Ex autog.

To

To prove the deaths of the lord Bourchier, and his wife, and his baſtard ſons, JAMES, HUMFRY and GEORGE.

ELIZABETHA, &c. Omnibus, &c. Inſpeximus quoddam recordum coram baronibus de Scaccario, &c. in memorand' annis regnorum dominorum PHILIPPI & MARIÆ nuper Regis & Regine primo & ſecundo termino Michaelis rotulo 61. ex parte remem' theſaur', &c. Staff. memorand. quod nuper comptum fuit in memorand. ſcaccarii anno regni nuper regis EDVARDI ſexti primo, termino Paſche, rot. 13. ex parte remem' theſ. Quod JOHANNES BOURCHIER, miles, nuper dominus Barners ac nuper deputatus generalis villæ & marchiar. Caleſ. per ultimam voluntatem ſuam. Dat. 3. Martij, A. D. 1532. inter alia in conſideratione quingent. librarum quas debuit domino HENRICO, nuper regi Anglie, &c. octavo, &c. Dedit prædicto Regi & heredibus poſt mortem uxoris prædicti JOHANNIS maneria ſua de Haughton, Offley, & Doxſey in com. Staff. præd. Rex nuper ſolvens pro eis executoribus JOHANNIS ultra prædict. ſummam quingentarum libr. tantum quantum eidem nuper Regi placeret, &c. ſuper quo præceptum fuit tunc vicè com. comitatus præd. &c. qui retornavit breve cum inquiſitione annexa, cujus tenor ſequitur, &c. Inquiſitio capta apud Staff. &c. undecimo die Junij anno regni regis EDWARDI ſexti, &c. primo, &c. per ſacrament. &c. qui dicunt ſuper ſacramentum ſuum, &c. quod JOHANNES BOURCHIER, miles, nuper dominus Barners, & KATERINA nuper uxor obierunt, viz. idem dominus Barners obiit 19. die Martij, anno regni regis HENRICI, nuper Regis Angliæ octavi, &c. 23. & quod prædict. KATERINA obiit duodecimo die Martij, anno regni Regis prædicti 27. & quod dominus Barners fuit ſeiſitus manerior' High Offley, Doxſey & Haughton in dominio ſuo ut de feodo, & quidam WILLIELMUS ESSEX, miles, & alii recuperaver' maneria prædict. verſus eum termino paſche ſexto regis HEN. VIII. rotulo 325. virtute cujus recuperationis prædict' WILLIELMUS ESSEX & alii intraver' in maner' prædict. & ſic ſeiſiti ad inſtantiam dicti JOHANNIS BOURCHIER, militis, domini Barners, in complementum indenturæ inter ipſum dominum Barners & quendam HUMFRIDUM BOURCHIER, arm', dat. 22. die Januarij anno Regis prædict' 23. &c. WILLIELMUS ESSEX, miles, & alii 11. die Martii eodem anno confirmaver' præfato HUMFRIDO BOURCHIER, domino EDVARDO HOWARD, uni filior' THOME, nuper ducis Norff. & aliis maner' prædict. de High Offley heredibus & aſſignat' ſuis ad uſum domini Barners pro termino vitæ ſuæ, &c. Et poſt ipſius mortem ad uſum dicti HUMFRIDI BOURCHIER, & hered. de corpore ſuo legitime procreat. & pro defectu talis exitus ad uſum dicti domini Berners, heredum & aſſignator' ſuor' imperpet. &c. & ipſe ſeiſitus ſexto die Julij anno 31. HEN. VIII. pro quadringentis & viginti libris ſibi per THOMAM SKRYMSHIRE, ſolut', vendidit maner' prædict. ſibi & heredibus ſuis, & FRANCISCUS ROOS, armig', THO. MORETON, gen. &c. recupaver' maner' prædict. verſus HUMFRIDUM termino Trinitat. 31. HEN. VIII. rot. 356. que recuperatio fuit ad uſum THOME SKRYMSHIRE & hered. & HUMFRIDUS habuit exitus manerii à morte KATERINÆ per tres annos, & THOMAS SKRYMSHIRE poſtea ad diem capt. inquiſitionis. Et ſimiliter dicunt juratores quod prædict. WILLIELMUS ESSEX & alii fuer. ſeiſiti manerij de Doxſey in feodo ratione recuperationis præd. & per cartam dat. primo die Maij anno 24 regis HEN. VIII. ad ſpecialem deſiderium & inſtantiam dicti JOHANNIS BOURCHIER, militis, domini Barners, confirmaver. &c. GEORGIO BOURCHIER, domino EDVARDO HOWARD, & aliis maner. de Doxſey ad uſum JOHANNIS BOURCHIER, militis, domini Barners, pro vita, & poſtea ad uſum prædicti GEORGII BOURCHIER, & heredum de corpore ſuo legitime procreator', & poſtea ad uſum domini Berners, & hered. Et dominus Barners per cartam dat. 23. Aug. anno 24 HEN. VIII. ratificavit ſtatum cofeoffator' eis & hered. ad uſum præd', per quod GEORGIUS proficua percepit immediate poſt mortem KATERINÆ nuper uxoris prædict' JOHANNIS BOURCHIER, domini Barners, per ſpatium quinque annorum, &c. & quod WILLIELMUS STAMFORD, arm' perquiſivit maner' de Doxſey de præfato GEORGIO BOURCHIER,

Hh

Obit' domini Berners & KATERINÆ uxoris.

HUMFRY BOURCHIER.

High Offley.

Doxſey Man.

GEORGE BOURCHIER

CHIER & intravit & recepit proficua uſque diem captionis inquiſitionis, &c. Et ipſiuſmodi juratores dicunt quod prædict' WILLIELMUS ESSEX, miles, & cofeoffati

Haughton Manor.

fuer' virtute recuperationis præd' ſeiſiti manerii de Haughton & per cartam ſuam dat. 4. die Maij 24. HEN. VIII. ad ſpecialem deſiderium & inſtantiam prædict' JOHANNIS BOURCHIER, militis, domini Barners, & in complementum indenture inter ipſum dominum Barners & JACOBUM BOURCHIER, ar', dat. 21. die Aprilis anno regni regis HEN. VIII. 23. Confirmavit, &c. præfatis JACOBO

JACOBUS BOURCHIER.

BOURCHIER, domino EDMUNDO HOWARD uni filior. THO. nuper ducis Norff. & aliis maner' prædict' de Haughton eis & heredibus ad uſum prædict' JOHANNIS BOURCHIER, domini Barners, pro vita, poſtea ad uſum JACOBI & heredum de corpore ſuo legitime procreator', & poſtea ad uſum præd' JOHANNIS, domini Barners, hered. & aſſignat' ſuor', & ſic JACOB. & alii ſeiſiti, prædict. JOHANNES, dominus Berners, poſtea per cartam ſuam dat. 24. Aug. anno regni regis HEN. VIII. 24. confirmavit ſtatum eorum, & JACOB. intravit in maner' prædict' & recepit proficua à morte KATERINE, nuper uxoris prædict' JOHANNIS BOURCHIER, domini Barners, uſque primum diem Novembris ult' prætcrit', circa quam diem

MARIA vidua JACOBI BOURCHIER.

JACOBUS prædict' obiit. Et poſt ejus mortem MARIA, nuper uxor præd' JACOBI, recepit proficua, ſed quo titulo ignorant. Et valor manerii High Offley, 23 *l.* 6 *s.* 8 *d.* Valor manerii Doxey, 40 *l.* 6 *s.* 8 *d.* Valor manerii Haughton 47 *l.* 9 *s.* 4 *d.* Et omnia maneria prædicta ſeiſita in manus regis ED. VI. &c. Nos autem præmiſſa omnia ad requiſitionem THOME KNEVET, ar', ſub ſigillo ſcaccarii noſtri duximus exemplificand. Teſte WILLIELMO, marchione Winton' Theſaur' noſtro Anglie apud Weſtm. 29. die Junij anno regni noſtri undecimo.

11 ELIZ. 29. Junij.

10 Junij 8 HEN. VIII.

This indenture quadrupartite indented, made between JOHN BOURGCHIER, lord Barners, knight, oh the oon partie, and THOMAS UNTON, eſq; on the other partie, witneſſeth that it is covenanted, *&c.* between the parties aforeſaid, and the ſaid lord covenanteth, *&c.* to the ſaid THOMAS UNTON, That MARY BOURGCHIER, oon of the daughters and heirs apparaunt of the ſaid lord, ſhall by Goddys grace and ſufferance take to her husband, ALEXANDER ſon and heir apparaunt of the ſaid THOMAS UNTON, at ſuch time and place as it ſhall pleaſe THOMAS, if the ſaid ALEXANDER thereto waull conſent, and the ſaid THOMAS UNTON covenanteth with the ſaid lord Berners, that ALEXANDER ſhall take MARY to wife in the ſame manner, *&c.* and for four hundred marks ſterling, paid to the ſaid lord by the ſaid THOMAS UNTON, at the ſealing, and two hundred marks to be paid at certain times after, the ſaid lord covenants that THOMAS, earl of Surrey, Treſourer of England, now being ſeiſed of the mannors of Barncholt, Horham, Thorphall, and Cowling in Suffolk, Thetford in the iſle of Ely, Loveden in Tyd, St. Mary in Lincolnſhire, The maners of Aſhwellthorp, Colkyrk, North-creke and Gately in Norff. and of all other lands, *&c.* which were of the inheritance of dame ELIZABETH, late wife of the ſaid earl, in the towns aforeſaid for term of his life as tenant by the curteſy of England, the reverſion whereof to the ſaid lord Berners and his heirs now belonging ſhall ſuffer ſir THOMAS KNYVET, knight, and others to recover all the ſaid manors, except Aſhwellthorp, Colkirk and Northcreak, *&c.* this preſent Trinity term, by writts of entre in the poſt, the erle to vouch the lord Berners, who to vouch the comon vouchee. As to the manors of Aſhwellthorp, Colkirk and Northereake, which were held of the earle as of his manor of Forncet in Norfolk, afore they came to the earl's poſſeſſion: The earle to ſurrender his eſtate therein, to the ſaid lord Berners and his heirs for ever, ſaving to the earle his ſaid ſeignory in the ſame; and the ſaid lord Berners in the ſaid preſent term, to ſuffer the ſaid recoverers to recover the ſaid mannors againſt him, *&c.* The ſaid recoverys to be to the uſe of the ſaid earle for life, and after his deceaſe, the manors of Barncholt, Horham and Thorphall in Suffolk, Thetford in the iſle of Ely, to the uſe and behof of the ſaid ALEXANDER and MARY during the life of the ſaid lord Berners, and of the reſidue of the ſaid manors, after the deth of the earle, to the uſe of the ſaid lord Berners for life; after his deceaſe, then

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The great ſettlement of the lord Berners lands on his two daughters and heirs MARY and JANE.

then the manors of Aſhwellthorp, Colkirk, Norfolk; Barneholt, Suffolk, to the uſe of the ſaid MARY, and the heirs of her body lawfully begotten; and for lack of ſuch iſſue, to the uſe of oon JANE BOURGCHIER, another of the daughters, and heirs apparaunt of the ſaid lord Barners, and of the heirs of her body lawfully begotten: and if the ſame JANE deceaſe without iſſue, then to the uſe of the ſaid lord Barners, and the heirs of his body lawfully begotten, (with divers remainders over to the uſes of THOMAS, lord Howard, knight, ſir EDWARD HOWARD, knight, EDMUND HOWARD, eſq; brothers in tail male, one after the other, after to lady Muriell, Viscounteſs Lyell, ANNE, lady Dacre, wife of THOMAS, lord Dacre of the South; dame ELIZABETH BOLEYN, wife of ſir THOMAS BOLEYN, knight, and dame MARGARET BRYAN, wife of ſir THOMAS BRYAN, knight, and the heirs of their bodies lawfully begotten; and for default of iſſue of any of the ſaid ladyes, then of her part to the uſe of the other ladyes ſo over-living, *&c.* in tail general, and for default of ſuch iſſue, to the uſe of the right heirs of the ſaid lady ELIZABETH, moder of the ſaid lord Barners and their heirs for ever. And of the manors of Thetford, in the iſle of Ely; Horham, Thorphall and Cowling in Suffolk; Northcreak and Gatlye in Norfolk; Loveden Manor in Lincoln, to the uſe of the ſaid JANE BOURCHIER, and the heirs of her body lawfully begotten, and for lack of ſuch iſſue, to the uſe of the ſaid MARY, and the heirs of her body lawfully begotten, (with the ſame croſs remainders as before.) And moreover it is covenanted, that whereas, the ſaid earle is ſeiſed of the manors of Kyllingholm, Alyſeby, Boſton, Toft, Skyrbeck, Pynchebeck, Thorphall and Bacons in Quaplode in the county of Lincoln; Ryngburgh in Yorkſhire; Fiſherwick, Bacre, Bromwych and Shelfeld in Staffordſhire; Stonham Aſpall in Suffolk for term of his life, by the curteſy of England; the revertion to the ſaid lord Barners, and his heirs, he ſhall ſuffer the ſaid ſir THOMAS KNYVET, and the others to recover the ſaid manors againſt the ſaid earle in the next Mychell: term, *&c.* and the ſaid recoverys to be to the uſe of the ſaid earle for life, after to the lord Berners for life, and after his deceaſe of the manors of Boſton, Toft, Skirbeck, Pincebeck, Thorphall and Bacons in Quaplode, Lincoln; Fiſherwyk, Bacre, Bromwich and Shelfeld in Staffordſhire, to the uſe of the ſaid MARY, and the heirs of her body lawfully begotten; and for lack of ſuch iſſue, to the uſe of the ſaid JANE BOURCHIER, and the heirs of her body lawfully begotten; and for default of ſuch iſſue to the uſe of the ſaid lord Berners, and the heirs of his body lawfully begotten, (with the ſame remainders over as before,) and of the manors of Killingholm and Alesby, Linc'; Ryngburgh, Ebor. and Stonham, Aſpall in Suffolk, to the uſe of the ſaid JANE BOURGCHIER, and the heirs of her body lawfully begotten, and for default of ſuch iſſue, to the uſe of the ſaid MARY, and the heirs of her body lawfully begotten, (with the ſame remainders as before.) And over this the ſaid lord Berners covenanted, that he in the ſaid term of St. Mychell ſhall ſuffre recoveries to be had againſt himſelf, of the manors of Hunſdon in Hertford, to the uſe of himſelf for life, and after to JANE, and the heirs of her body lawfully begotten, and after to MARY in like manner, and of the manor of Berners Rothing in Eſſex to the uſe of himſelf for life, and after to MARY, and the iſſue of her body lawfully begotten, and after to JANE in like tail, with remainders to the heirs of the body of the lord Berners, lawfully begotten; and after to the right heirs of the ſaid lord Berners for ever. A covenant of the lord Berners, to deliver his daughter MARY into the hands of THOMAS UNTON, or his aſſignes; to be provided with meat and drink, and apparel convenient, according to her degree, till ſhe attained to the age of twenty years. THOMAS UNTON covenants with the lord Berners, that if ALEXANDER dye, living MARY, not being married to her, he or his aſſignes to re-deliver MARY to the lord Berners in too months after the death of ALEXANDER, and to deliver in joynture, if marryed to ALEXANDER, when ſhe ſhall be twenty years of age, the manors of Eſt Hegners in Oxfordſhire, of the yerely value of 40*l.* *&c.* and the lord Berners covenants with THOMAS UNTON, that if MARY or

MARY's part, Colkirk, Thetford, Aſhwellthorp, Horham, Thorphall, Barnholt, limited to MARY and heirs of her body, after to JANE, her ſiſter. MARY muſt die without iſſue, for JANE had livery of them, 25 H. VIII. and her iſſue enjoy them to this day, Mrs. BOKENHAM, having Aſhwellthorp, 1717. as her chief ſeat from her anceſtrix the ſaid JANE.

Mem. No mention of JAMES, HUMFRY, or GEORGE BOURCHIER, in this entaile, ſo muſt be ſuppoſed baſtards.

JANE BOURGCHIER's part, MARY's part,

JANE's part.

Note, That ſome of theſe mannors, as Fiſherwick, and others, were after ſold by the lord Berners, and others enjoyed by ſir THOMAS KNYVET, his great grandſon, till he ſold them, as by the counter parts may appear.

Note, The lord Berners ſold theſe manors himſelf after.

ALEXANDER dye afore Marriage, or iſſue had between them, or if the ſaid THOMAS or lord die, ſo that either of them ſhould be in ward to the King, or other perſon, or if MARY refuſe to be married to ALEXANDER, when of full age, then THOMAS UNTON, *&c.* to receive out of the manors of Colkirk, Boſton, Toft, and Skyrbek ſo much money, as THOMAS UNTON ſhall pay to the lord Berners with charges, *&c.* THOMAS UNTON covenants, that all the manors and lands which he hath, or ſhall have by any way, ſhall remain to ALEXANDER after his death, and his heirs, ſaving the Joynture of ELIZABETH, wife of THOMAS, with proviſo to ſell any parcell if he ſettles other lands to the value. The lord Barners covenants, that the lands are free from incumbrances, and to deliver all writings relating to the lands ſettled, to be laid up in the priory of St. Mary Overy in Southwark. The lord Berners bound to THOMAS UNTON in 2000 marks, THOMAS UNTON, to the lord in 500 marks to perform covenants. Dated the 10th day of June, 1510, and the 8th year of King HENRY the VIIIth.

Note, Two parts of this deed and all the other old writings of MARY's part, which were to be laid up in the priory, are in the hands of Mrs BOKENHAM, which ſhe could never have had if the eſtate tail of MARY had not been determined. Ex autogr.

MARY BOURCHIER, firſt daughter and coheir.

VINCENT's viſitation of Berkſhire, p. 102, 103.

Sir THOMAS UNTON of Wadley in Berks, knight, called THOMAS UNTON, eſq; in the deed of the 8th year of king HENRY the VIIIth.

ELIZABETH, daughter and heir of JOHN HYDE, of Denchworth in Berkſhire.

First wife MARY, daughter and coheir of JOHN BOURCHIER, laſt lord Berners, articles of marriage, dated 2d of HENRY VIII. ſhe died without iſſue, before the 25th of king HENRY VIII. as appears by the pedigree of the family and inquiſition. K k

ALEXANDER UNTON, ſon and heir apparent, mentioned in the deed of the 8th of king HENRY the VIII, afterwards knight, and died about the ſecond of king EDWARD the VIth, ſee the inquiſition dated that year.

Second wife CECILIA, daughter of EDWARD BULSTRODE, and MARGARET his wife, the articles of their marriage, dated 14th of July, in the 25th of king HENRY the VIIIth, as appears by the inquiſition.

EDWARD UNTON, ſon and heir of ſir ALEXANDER, and CECILIA BULSTRODE, he died without iſſue, as appears by all the pedigrees of the family.

TO prove that this MARY, daughter and coheir of JOHN, laſt lord Berners, died afterwards without iſſue, ſee VINCENT's viſitation of Berks, p. 102. VINCENT's baronage, p. 214. the inquiſition following, and the deed before mentioned, and the deed and ſchedule markt M m. for that if ſhe had had iſſue, the mannors of Aſhwellthorp and others, which were ſettled on her, and the iſſue of her body lawfully begotten by that deed of 2 HEN. VIII. could not have been poſſeſſed by her ſiſter JANE, and the iſſue of her body, in the 24th of HEN. VIII. The now claimant Mrs. BOKENHAM, being poſſeſt thereof at this time under this ſettlement, after the failure of iſſue of MARY; in the enſuing inquiſition after the death of ſir ALEXANDER UNTON aforeſaid, is ſet forth a marriage ſettlement, made by the ſame THOMAS, on the ſame ALEXANDER, and CECILIA, daughter of EDWARD BULSTRODE, his ſecond wife, by deeds, dated the 14th and 16th of July, 25th of king HENRY the VIII; which CECILIA was found to outlive ſir ALEXANDER, and that EDWARD was their

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ſon and heir, enjoying lands in tail male, under this laſt ſettlement. And in the indenture to JANE, dated the 24th of March, in the 24th year of HENRY the VIII, theſe very manors of Aſhwellthorp, and others ſettled on MARY by this deed, of the 2d year of king HENRY the VIIIth, are delivered out of the King's hands to JANE her ſiſter; whom, in that livery, the King himſelf calls daughter and heir of the lord Berners, ſo that MARY muſt have been dead without iſſue, as the pedigree proves, before 25th HENRY VIII. ALEXANDER elſe could not have married a ſecond wife, who out lived him.

Inquiſitio capta, &c. 21 die Februarij anno ſecundo regis EDVARDI VI. coram, &c. Virtute brevis de diem clauſit extremum poſt mortem ALEXANDRI UNTON, militis, &c. Juratores dicunt ſupr. ſacramentum ſuum quod THO. UNTON, miles, pater ALEXAND. prædict. ante obitum ALEXAND. fuit ſciſitus in dominio ſuo ut de feodo de & in manerio de Sheprige com. Berk. Wilts & South. &c. Idem THO. UNTON per indenturam inter ipſum THO. & MARGARETAM BULSTRODE, viduam, nuper uxor. EDVARDI BULSTRODE, armig. datam quarto decimo die Julij anno 25. nuper regis HEN. octavi convenebat quod concederet, &c. bonum ſtatum in manerio de Sheprige prædict' JOH. RUSSEL, militi, & aliis ad uſum poſt maritag. habitum inter dictum ALEXANDRUM & CECILIAM filiam prædictæ MARGARETÆ BULSTRODE & hered. maſcul. de corporibus dicti ALEXANDRI & CECILIÆ legit' procreat' &c. quod quidem maritagium inter ALEXANDRUM & CECILIAM ſolemnizatum fuit, & poſtea prædict. THO' UNTON, miles, per cartam ſuam dat. 16. Julij 25 HEN. VIII. dedit prædict. JOH. RUSSEL & aliis prædict. manerium de Sheprige, &c. ad uſus ALEXANDRI & CECILIÆ, &c. ut ſupra, & ALEXAND. obiit & CECILIA ipſum ſupervixit & ſeiſita eſt manerii prædict. pro vita ſua, revertione inde EDWARDO UNTON filio hered. ALEXAND. & heredibus maſculis de corpore ſuo legitime procreatis.

Berks. Ex autogr. K k

THOMAS UNTON father of ALEXANDER, his ſettlement on his ſon's 2d wife after the death of MARY BOURCHIER.

EDMUND KNYVET, and JANE his wife, ſecond daughter of the lord BOURCHIER.

To the right honourable ſir THOMAS AUDLEY, knight, lord chancelor of England.

IN moſt humble wiſe ſheweth, *&c.* EDMUND KNYVET, eſq; and JANE, his wife, daughter and ſole heir of JOHN BOURCHIER, knight, lord Barneſſe deceaſed; that where the ſaid lord Barneſſe was ſeiſed in fee of the manors of Offley, Haughton and Doxſey, in Staffordſhire, &c. Oon JAMES BAKYN, HUMFRY BAKYN, and GEORGE BAKYN, naming themſelves to be the baſtard ſonnes of the ſaid lord Barneſſe, made means to him at Calyce to make the ſaid manors ſure to them and their heirs, *&c.*

Ex ipſa Bill. in Can. vel copia ejuſd. L l

JANE, daughter and ſole heir of lord Berners.

JAMES, HUMFRY, and GEORGE, his baſtard ſons, called BAKYN,

Indenture made the 24th day of March, in the 24th year of the reign of king HENRY the VIIIth, between the ſame moſt criſten Prince, our natural leige lord of the oon partie, and EDMUND KNYVET, eſq; and JOHANE his wife, daughter and heir of JOHN BOURGCHIER, knight, lord Berners deceaſed of the other partie; Witneſſeth, that where our ſaid ſoveraigne lord is agreed to grant to the ſaid EDMUND and JOANE his wife a ſpecial livery, and Utterlemain to be had of and in all ſuch lordſhips, manors, lands, tenements, rents, ſervices, *&c.* which to the ſaid JOHANE deſcended and came in poſſeſſion or revertion from the ſaid lord Barners, as daughter and heir of the ſaid lord Barners, as in the ſaid ſpecial livery is contayned. Nevertheleſs, for that our ſaid ſovereigne lord ſhould not be deceived, but that he ſhould have perfect knowledge of all ſuch lordſhips, lands, *&c.* whereof the ſaid EDMUND and JOANE, willen and intenden to take any advantage or profit of by the ſaid livery, and alſo that the King ſhould be aſcertained of all other lordſhips, lands, *&c.* which be deſcended to the ſaid JOANE, *&c.* as daughter and heir of the ſaid lord Barners, the ſaid EDMUND KNYVET and JOANE his wife, have delivered to ſir ROBERT NORWICH, knight, chief juſtice of the Comon-place, and ſir THOMAS NEVILLE, knight, ſurveyer of all the King's liverys, a writing indented annext, in which is contained all ſuch lordſhips,

24th March, 24 H. VIII. Indenture between King HEN. VIII. and EDMUND KNYVET, eſq; and his wife JOANE. Ex autogr. M m

lordſhips, manors, lands, *&c.* and the very value of the ſame as the ſaid EDMUND and JOANE claime to have out of the King's hands, by the ſaid ſpecial livery, and alſo of all thoſe lordſhips, manors, lands, *&c.* which be put in any feoffment, fine or recovery, whereof the immediate uſe, or whereof the revertion in uſe or poſſeſſion is deſcended, and come to the ſaid JOANE and her heirs, or to the heirs of her body lawfully begotten, by and after the death of the ſaid lord Berners, and that all the manors in the ſcedule be of the utermoſt and beſt valew; and if any ſhall be found to deſcend to her which are omitted in the ſchedule annext, or in caſe thoſe ſpecified are under valued, then to make new agreements with the ſaid chief juſtice and ſurveyer for the valew, and find ſuretys to pay the money; in witneſs, *&c.* to the one part the King ſets his ſign manual, the other EDMUND and JOANE their ſeals.

The ſcedule annext.

Hic ſequitur annuus valor, &c. domin' maneriorum, &c. quæ nuper fuer' JOH. BOURGCHIER, militis, domin' Berners defunct' & quæ poſt mortem ejuſdem EDMUNDO KNYVET, armig. & JOH. uxori filiæ & hered. prædict. domin' Berners jure hereditario deſcendere debent, &c.

Norff. Manor de Aſhwellthorp, &c. ſettled on MARY UNTON, by deed of 2 HEN. VIII. and now delivered to JANE, which muſt be on her death without iſſue.

Norff. Colkirk manor, the ſame part of MARY the ſiſter.

Norff. Northcreak manor, JANE's part 2 HEN. VIII.

Norff. Gatele manor, JANE's part 2 HEN. VIII.

Suff. Barnholt manor, MARY UNTON's part 2 HEN. VIII.

Suff. Horham, Thorphall, JANE's part 2 HEN. VIII.

Suff. Cowling manor, JANE's part 2 HEN. VIII.

Inſ. Ely. Thetford manor, JANE's part 2 HEN. VIII.

Linc. Kylingholme manor ſettled on JANE 2 HEN. VIII.

Linc. Alesby manor ſettled on JANE 2 HEN. VIII.

Linc. Boſton Toft and Skirbek ſettled on MARY. 2 HEN. VIII.

Linc. Pynchebeck, Thorphall, Bacons and Bacons manor in Quaplode, ſettled on MARY UNTON, and the heirs of her body lawfully begotten, by deed dated 2 HEN. VIII. and could not deſcend to JANE, but by failure of iſſue of MARY, her ſiſter.

Linc. Loveden manor in Tydd St. Mary, JANE's own part 2 HEN. VIII.

Linc. Walpole manor not mentioned in the deed of 2 HEN. VIII

	l.	*s.*	*d.*
Sum total of the values of theſe manors. — —	247	12	09.

Livery ſpecial to EDMUND KNYVET, and JANE his wife, 5. July, 25 H. VIII. Ex autog.

HENRICUS octavus Dei gratia Angliæ, &c. Omnibus, &c. Sciatis, &c. Concedimus & licentiem damus pro nobis & heredibus noſtris &c. dilecto & fideli ſervienti noſtro EDMUNDO KNYVET, armig. & JOHANNÆ uxori ejus filiæ, & hered' JOHANNIS BOURGCHIER, militis, nuper domini Berners jam defuncti, als. dicto EDMUNDO KNYVET, armig', ſervienti in officio janitoris hoſpitii noſtri & JOHANNÆ uxori ejus filie & heredi JOHANNIS BOURGCHIER, militis, nuper domini Berners jam defuncti, als. dicto EDMUNDO KNYVET, armig. & JOHANNÆ uxori ejus filiæ & heredi JOHANNIS BOURGCHIER, militis, nuper domini Berners jam defuncti, quam conſanguin' & hered. ELIZABETHÆ matris ipſius JOHANNIS BOURGCHIER, militis, nuper domini Berners jam defuncti, filii & heredis ipſius ELIZABETHE, &c. ſive aliter die obitus præd' JOHANNIS BOURGCHIER, militis, nuper domini Berners de aliquibus caſtris, honoribus, maneriis, terris, tenem, &c. Advocationibus, &c. vel hereditamentis quibuſcunque infra regnum Angliæ, Walliam, Caleſ. vel March. eorundem que fuer' predict' JOHANNI BOURGCHIER militis, nuper domini Berners jam defuncti, aut alicujus anteceſſ. vel anteceſſ. ipſius JOHANNIS, &c. ad uſum JOHANNIS, &c. vel ad uſum dictæ JOHANNÆ, &c.

&c. ſeiſit' exiſten', &c. quod tam iidem EDMUNDUS KNYVET, armig', & JOHANNA uxor, &c. immediate poſt datam harum liter' patentium abſque probatione ætatis ſuæ, &c. & abſque aliquâ liberatione ſeu proſecutione hereditatis ipſius JOHANNÆ, &c. extra manus noſtras hered. vel ſucceſſorum noſtrorum in cancellariâ noſtrâ in omnia & ſingula prædict. caſtra, honores, domin', maneria, terras, tenem', & hereditamenta quecunque, &c. infra regnum Angliæ, &c. quæ de nobis, &c. tenentur in capite, &c. quæ nuper fuer' ejuſdem JOHANNIS BOURGCHIER, militis, nuper domini Berners, aut modo ſunt KATERINÆ, nuper uxoris prædict. JOHANNIS BOURGCHIER domini Berners pro termino vitæ ſuæ, &c. licite & impune ingredi intrare & ſeiſire & ea, &c. abſque alia liberatione proſequend' &c. homagio tamen fidelitate & releviis nobis in hac parte debitis ſemper ſalvis, &c. Teſte, &c. 5 die Julij anno regni noſtri viceſimo quinto.

HENRICUS octavus, &c. Omnibus, &c. Sciatis quod nos, &c. in conſideratione veri & fidelis ſervitii quod humilis ſerviens noſter EDMUNDUS KNYVET, armig' ſerviens noſter ad portas ante hæc tempora nobis impendit, &c. Dedimus, &c. Eidem EDMUNDO officium receptoris dominii noſtri de Denbigh in North-wallia quod JOHANNES A PYLLESTON nuper defunctus habuit, habend' per ſe vel deputat' ſuum, &c. durante vita, &c. Teſte meipſo apud Weſtm. ſexto die Februarij anno regni noſtri ſextodecimo.

6. Febr. 16 HEN. VIII. EDMUND KNYVET, receiver of Denbigh. Ex autogr. O o

Finalis concordia facta, &c. anno regni regis HENRICI octavi Anglie, &c. triceſimo, coram, &c. inter STEPHAN. BURRELL quer' & EDM. KNYVET ſeniorem, ar', & JOHANNAM uxorem ejus filiam & heredem JOHANNIS BOURGCHIER, militis, domini Barners defor' de manerio de Thetforthe in inſula Elien' ac de ſex meſſuagiis, &c. Jus STEPHANI &c. Et pro hac recognitione, &c. STEPHANUS conceſſit EDMUNDO & JOHANNÆ pro vitis & diutius viventis, &c. remanere JOHANNI KNYVET, armig' filio & heredi præd. EDMUNDI & AGNETI uxori ejus, & heredibus maſculis de corpore ipſius JOHANNIS, inter ipſos JOHANNEM & AGNETEM legitime procreand', &c. reman' rectis heredibus JOHANNIS, &c.

30 H. VIII. P p A fine levyed of the manor of Thetforth in the iſle of Ely, by EDMUND KNYVET, and JOANE his wife, whereby it was ſetled on them for life, remainder to JOHN KNYVET, their ſon and heir, and AGNES his wife in tail. Ex autogr.

Inquiſitio, &c. capt' apud Northton 30 Septembris anno regni regis HENRICI octavi 31. coram, &c. per ſacrament, &c. poſt mortem EDMUNDI KNYVET, ſen' armig. &c. qui dicunt prædict. EDMUNDUS KNYVET fuit ſeiſitus maner' de magna Weldon in feodo, & de 30 meſſuagiis, &c. & 30 librat. reddit' in magna Weldon, Thyrning, Dynthorp, Kirby, Deen & Bulwick in com. præd. & levavit finem ejuſdem manerij & terrarum craſtino Purific' beatæ Marie anno 30 Regis nunc, per licentiam domini Regis dat. 14 Jan. A. triceſimo inter STEPHANUM BURRELL quer' & præfat' EDM. KNYVET & JOHANNAM uxorem defunct. manerij & terrarum prædict. jus STEPHANI qui conceſſit ea EDMUNDO & JOHANNÆ tota vita EDMUNDI & JOHANNÆ, & alterius diutius viventis, &c. reman. inde JOHANNI KNYVET, ar', filio & heredi apparent' prædict. EDMUNDI & JOHANNÆ & heredibus maſculis de corpore JOHANNIS inter ipſum & AGNETEM uxorem legitime procreat', &c. remanere rectis heredibus EDMUNDI, &c. virtute cujus finis EDMUNDUS & JOHANNA ſeiſiti manerij præd. pro vitis, & EDMUNDUS obiit & JOHANNA ipſum ſupervixit & tempore inquiſitionis ſeiſita eſt manerij, &c. Et ulterius dicunt quod maner' &c. tenentur in capite de Rege & valent xx libras, &c. quod EDMUNDUS KNYVET obiit primo die Maij ultimo preterito, & quod JOHANNES KNYVET, arm', in fine predict, ſpecificat' eſt filius & heres dicti EDMUNDI & etatis viginti duorum an' & amplius, &c.

31 H. VIII. Ex inquiſitione. Q q JOHN KNYVET and AGNES his wife.

JOAN KNYVET after the death of EDMOND.

OMnibus, &c. JOHANNA KNYVET vidua, nuper uxor EDMUNDI KNYVET, ſen' arm' defuncti, &c. Cum EDMUNDUS in vita ſua ac præfata JOHANNA termino S. Hilarij anno regis nunc, &c. recogn' maner' de Thetforth in inſula Elien', &c. eſſe jus STEPHANI BURRELL, &c. qui conceſſit ea EDMUNDO & JOHANNE pro vitis reman' JOHANNI KNYVET arm' filio & hered. EDMUNDI, & AGNETI uxori ejus, &c. Noveritis jam me præfatam JOHANNAM, &c. Surſum reddidiſſe præfato JOHANNI KNYVET & AGNETI præd' maner' &c. tenend' eis & heredibus maſculis

31 H. VIII. Surrender of the manor of Thetforth by JANE KNYVET, to her ſon JOHN and AGNES his wife. Ex autogr.

masculis de corpore ipsius JOHANNIS inter ipsos JOHANNEM & AGNETEM legitime procreat' Dat. ultimo die Aprilis anno regni regis HEN. octavi tricesimo primo.

Termino Paschæ anno 36 HEN. VIII. Ex autogr. S. S.

R r
NB. OMNIBUS. Norff.

De homagio JOHANNÆ KNYVET, vidue, nuper uxoris EDMUNDI KNYVET pro omnibus terris quæ fuer' JOHANNIS BOURCHIER domini de Berners per unum annum integr' respectuand' 6 *s.* 8 *d.*

14 Sept. 6 E. VI. Licentia Regis alienandi maner' de Gateley dat. JOHANNÆ KNYVET filiæ & sole hered. JOHANNIS BOURCHIER domini Berners WILLIELMO & EDMUNDO, jun. filiis suis rem. JOHANNI KNYVET, filio & hered. apparent' JOHANNÆ in tallio, &c. Ex autogr.

EDWARDUS sextus Dei gratia Rex Angliæ, &c. Omnibus, &c. Sciatis, &c. Concedimus & licentiam damus dilectæ nobis JOHANNE KNYVET, vidue, filie & SOLE heredi JOHANNIS BOURGCHIOUR, militis, nuper domini Barners, quod ipsa per finem sive recuperationem in curia nostra coram justiciar' nostris de Banco apud Westm. levand' &c. totum illud manerium suum de Gately in com. nostro Norff. quod de nobis tenetur in capite dare &c. possit JOHANNI WALPOLE, gen', & STEPHANO BORELL, &c. Et eisdem JOHANNI & STEPANO, quod recipere possint, &c. & dare, præd' JOHANNÆ habend', &c. JOHANNE pro termino vitæ suæ, &c. remanere inde JOHANNÆ executoribus & assignatis pro termino viginti annor' post decessum suum & remanere WILLIELMO KNYVET & EDMUNDO KNYVET, junior', filiis prædict' JOHANNÆ ad totam vitam ipsorum WILLIELMI & EDMUNDI & eorum alterius diutius viventis, remanere JOHANNI KNYVET filio & hered' apparent præd' JOHANNÆ & heredibus de corpore JOHANNIS legitime procreatis, &c. remanere hered' de corpore JOHANNÆ, &c. Teste meipso apud Westm. 14 die Septembris anno regni nostri sexto.

T t
4 & 5 PHILIPPI & MARIÆ.

Omnibus, &c. JOHANNA KNYVET, vidua, filia & SOLA heres JOHANNIS BOURCHIER, militis, nuper domini Barners defuncti, & WILLIELMUS KNYVET generosus, &c. Sciatis nos, &c. Dedisse, &c. JOHANNI GIBBIS de Norwico & JOHANNIS STEYNER maneria nostra de Whaplode, Holbeche, & Quaplode, nec non omnia alia nostra messuagia, terras, &c. hereditamenta nostra ibidem & in Pyncebek, Multon, Skyrbek, Boston, Kyllingholme, & Aylsby in com' Linc' quæ ego præfatus WILLIELMUS KNYVET ac quidam STEPHANUS BURRELL jam defunctus per breve Regis & Reginæ nunc primo & secundo R. 808 recuperavimus versus præfatam JOHANNAM KNYVET, &c. quæ recuperatio habita fuit ad usum meæ præfatæ JOHANNÆ & hered' meorum habend' &c. ad usus & intentiones subsequentes, viz. ad opus & usum meæ præfatæ JOHANNÆ pro termino vitæ meæ & post mortem meam ad usum executorum & assignatorum meorum pro termino octoginta annorum, & post finem termini præd' ad usum JOHANNIS GIBBIS pro vita, & postea JOHANNIS STAYNER pro vita, & postea ad opus rectorum heredum meæ præfatæ JOHANNE KNYVET imperpetuum. Dat. 15 Novembris annis regnor' PHIL. & MARIE, &c. 4 & 5.

U u
Note, These lands were MARY's part 8 H. VIII.

Ex autog.

2 ELIZ. W w
JANE KNYVET, JOHN WALPOLE serjeant at law. MARY's part 8 H. VIII. Ex autog.

Indenture made 10 day of January, in the 2 year of Queen ELIZABETH betwixt JANE KNYVET of Ashwellthorp in the county of Norfolk, widdow, daughter and SOLE heir of JOHN BOURCHEOUR, knight, late lord Berners of the oon partie, and THOMAS TOWNESHEND of Testerton in the said county of the other partie, reciting a deed of Lease between JANE and JOHN WALPOLE, late searjeant at lawe, by the name of JOHN WALPOLE of Colkirk, for 21 years, of a close, &c. called Benecroft, butted and bounded, *&c.*

JANE KNYVET's will.

The sixth day of April in the year of our Lord 1560. and the 2 year of the reign of Queen ELIZABETH. I JANE KNYVET, widdow, daughter and SOLE heir of JOHN BOURCHIER late lord Berners deceased, do make this my present testament and last will, *&c.* I will that my body shall be buried within the

X x
EDMUND KNYVET buried at Ashwellthorp.

chappell next the chauncell of Ashwellthorp church, by my well beloved husband EDMUND KNYVET. I will that twenty pounds be bestowed on my funeralls, over and besides mourning cloths to be bestowed in black gowns and coots, 30 *l.* To the reparation of Ashwellthorp church, *&c.* 40 *s.* of Wreningham church, *&c.* 20 *s.* to the poor people within my several manors in Norfolk 20 *l.* to be paid by C shillings the year; to Ashwellthorp poor 20 *s.* each year for ten years successively; to the reparations of the highways at Ashwellthorp, and other my manors in Norfolk ten pounds; to the poor of St.

John in Bere-ſtreet, Norwich, 20 ſhillings by the year, for ſeven years, to every leper houſe about Norwich yearly, for 7 years after my death, two ſhillings, to the poor priſoners in Norwich caſtell for ten years, ſix ſhillings eight pence yearly. As to my manors, lands, *&c.* Whereas a fine was levied between JOHN WALPOLE, *&c.* plaintiff, and me the ſaid JANE, def. of the manors of Colkirke, North-creke, and Gately before recited, and the uſes therein ſpecified. Now I deviſe the manor of Colkirk to my ſon WILLIAM for the 20 years ſettled on my executors, and to my ſon EDMUND my manors of Gately, and North-creke, in like manner, but if either dye, the remainder to THOMAS KNYVET, my cozen and heir, my daughters ALICE, ROSE and CHRISTIAN. ROSE widdow of OLIVER REYMS, ALICE, wife of OLIVER SHIERS of Wreningham, CHRISTIAN, wife of THOMAS FOSTER, gent. had each ſums of money bequeathed to them, *&c.* To my goddaughters JANE, MARY, and BRIDGET WALPOLE, 6 *l.* 13 *s.* 4 *d.* each, at days of marriage, *&c.* My houſes in Norwich to be ſold, and my cozen and heir THOMAS KNYVET to have the refuſal; THOMAS GAUDY, eſq; WILLIAM KNYVET my ſon, JOHN GIBBIS and JOHN STEYNER, executors; to whom I give each a black gown and ten pounds, and the duke of Norfolk's grace ſupervisor, to whom I give a ring of gold, *&c.*

THO. KNYVET coſen and heir.

Ex autogr.

Probatum fuit, &c. 9 die Martii anno 1561. per JOHANNEM GIBBS, & WILLIELMUM KNYVET, executor' &c.

In the chappell on the north-ſide of the chancell in the church of Aſhwellthorp in the county of Norfolk and dioceſe of Norwich. Printed in WEAVER's funeral monuments, pag. 815. examined with the original inſcription.

Epitaph on JANE KNYVET.

JANE KNYVET reſteth here, the O N L Y Heir by right,
Of the Lord Berners that Sir JOHN BOURCHIER hight,
Twenty Years and Three a Widdows Lyff ſhe ledd,
Always keeping Howſe, where Rych and Poor were fedd.
Gentyll, Juſt, Quyet, voyd of debate and Stryff,
Ever doying good: Lo thus ſhe led her Lyff,
Even unto the Grave, where Erth on Erth doth lye,
On whos Soul God grant of his aboundant Mercy.

The 17 of February, Anno Domini M D LXI.

Mrs. JANE KNYVETT Lady of Aſhwellthorp, was buried March the 2. 1562.
Extracted out of the Church Regiſter, and examined.

JONN ſon of EDMUND, and AGNES his wife,

JOHN KNYVET and AGNES HARECOURT's deeds of covenants of marriage. 14. Febr. 29 HEN. VIII.

THIS indenture made the 14 day of February, in the 29 year of the reign of King HENRY the eight, between ſir JOHN HARECOURT of Elnhalle in Staff. knight, of the one partie, and EDMUND KNYVETT, eſq; ſerjeant porter to our ſaid ſovereign lord the King, and JANE his wife, daughter and SOLE heir of JOHN BOURGCHIER, late lord Berners deceaſed, of the other partie, witneſſeth, *&c.* That it is agreed between the parties that JOHN KNYVET, gent. ſon and heir apparant of EDMUND and JANE, ſhall take to wife AGNES HARECOURT, one of the daughters of the ſaid ſir JOHN, this ſide of the feaſt of St. Michel the arch-angell next enſuing, if AGNES will conſent, and that AGNES ſhall marry JOHN KNYVET, if JOHN will aſſent, *&c.* Sir JOHN to find wedding cloaths for AGNES, and EDMUND the like for JOHN; EDMUND in ſix months after marriage to ſettle lands of twenty pounds *per annum* value, upon them and their heirs males between them two to be begotten in the county of Lincoln, and to aſſure unto ſir HENRY KNYVETT, knight, and ſir RICHARD LONGE, knight, other lands in Lincoln, and Suffolk, of 20 *l.* more *per annum*, on condition to convey them to EDMUND and JANE for life of EDMOND, after to AGNES for life,

Yy

life, remainder to the heirs males of JOHN and AGNES, remainder to the right heirs of EDMUND and JANE, *&c.* And AGNES to have forty pounds *per annum* for her joynture, and that five hundred marks *per annum* shall descend to the issue male of their bodies, *&c.* sir JOHN HARECOURT to pay to EDMUND five hundred marks at several payments, for which to give bond.

Ex autog.

By me JOHN HARECOURT, knight.

26. Nov. 30 HEN. VIII. Z z

By bill dated 26 of November, 30 of king HENRY VIII. between the said parties it is agreed, that if EDMOND settle the mannors of Horham, Thorphall, and Barncholt in Suff. Thetforth in the isle of Ely, on his son JOHN and AGNES his wife and their issue in tail, then EDMOND to be discharged of all the covenants in the former indentures.

20 Jan. 34 HEN. VIII.

By me JOHN HARECOURT, knight.

A a a JOHN KNYVET of Plumstead in Norff. and AGNES his wife. Sale of Illary's manor in Estbergholt, Suff. to ROB. REYNOLDS, esq;

Indenture dated 20 January, 34 HENRY VIII. between JOHN KNEVET of Plumstead in the county of Norff, esq; and AGNES his wife of the one partie, and ROBERT REYGNOLD of Estbergholt in Suffolk, esq; whereby JOHN and AGNES sell to ROBERT all their part of the manor of Illarys alias Newall in Estbergholt, Stratford, Wenham magna, Capell, Butley, Holton and Brantham in Suffolk for 86 *l.* 13 *s.* 4 *d.*

AGNES, widow of JOHN KNYVET, re-married to WILLIAM BOWYER, gent. and her son THOMAS KNYVET.

1. March 7 ELIZ. AGNES widow of JOHN KNYVET re-married to WILLIAM BOWYER, gent. THOMAS KNYVET her son by JOHN.

BY 2 indentures dated the first of March in 7 year of Queen ELIZABETH, between WILLIAM BOWYER, gent. and AGNES his wife, late the wife of JOHN KNYVET, esq; deceased, of one part, and THOMAS KNYVET, esq; son and heir of the said JOHN KNYVET of the other part, reciting that WILLIAM and AGNES, in right of AGNES, held the mannors of Horham and Thorphall in Suffolk, and Thetforth in the isle of Ely, during the life of AGNES, the reversion in THOMAS KNYVET; they for 300 *l.* sell all their interest to THOMAS KNYVET and his heirs.

B b b Ex autogr. 18 Decemb. 10 ELIZ.

Indenture dated 18 December in the 10 year of ELIZ. between THOMAS KNYVET of Ashwellthorp in Norff. esq; and WILLIAM BOWYER of Wymbledon in Sur. Gent. and AGNES his wife, whereby THOMAS leaseth to them the scite of the mannor of Thetforth and all lands, &c. in the tenure of JOHN WEBB, for forty one years, at eight pounds *per annum.*

C c c Ex autog. Knight.

WILLIELMUS DRURY legum Dr. curie prerogative Cant' mag' custos, &c. dilecto, &c. THOME KNYVET, militi, filio nrali' & legitimo AGNETIS BOWYER, vidue, nuper de Wymbledon in Surr' Winton' dioces. Cant' provinc' defuncte. Cum eadem AGNES habens, &c. bona in diversi. dioces. &c. Tibi committimus potestatem administrandi bona sua, &c. teque administratorem eorum ordinamus, &c. dat. 7 die mensis Julij, 1579. LAUR. ARGALL

D d d Administration of the goods of AGNES BOWYER, granted to sir THO. KNYVET, her son. Ex autog.

Sir THOMAS KNYVET, knight, son and heir of JOHN KNYVET, and AGNES HARECOURT.

E e e Norff. Ex autog.

IN compoto WILLIELMI WALDEGRAVE, ar', nuper vic. Exit & amerciament' coram baronibus anno nono ELIZ. Regine.

De exit terr' THOME KNYVET generosi tenent' regine omnium terrar' que fuer' JOHANNIS KNYVET patris sui. Dimidium marce 4 *d.*

Dec. 20. 9 ELIZ.

To all men, *&c.* THOMAS KNYVET of Ashwellthorp in the county of Norfolk, esq; ANTHONY KNYVET and HENRY KNYVET in the said county, esq;

F f f

The said THOMAS, ANTHONY, and HENRY did grant and confirm to HUGH HARE, and RICHARD WARDE, their executors and assignees one annuity or yearly

yearly rent of forty pounds *per annum*, for twenty one years, iſſuing out of all their lands and tenements within the realm of England, *&c. dat. Decemb.* 20. *anno regni* ELIZABETHÆ *nono.* Ex autogr.

To all men, *&c.* THOMAS KNYVET, coſyn and heir to JOHN BOURCHIER, knight, late lord Barners, deceaſed, *&c.* Know ye, that I the ſaid THOMAS KNYVET have made, *&c.* my ſervant JOHN BROWNE, my lawful attorney for me, to enter into the manor of Hunſden, and into all and ſingular mannors, lands, &c. in the countys of Eſſex and Hertford, or elſwhere in England, which were the ſaid lord Berners, *&c.* Dated the 7 of July, in the eleventh year of Queen ELIZABETH. 7 July 11 Eliz. THO. KNYVET, eſq; coſin and heir of lord Berners. G g g Ex autog.

By me THOMAS KNYVETT. 27 May 13 Eliz.

To all men, *&c.* THOMAS KNYVETT of Aſhwellthorp in the county of Norff. eſq, coſyn and heir of ſir JOHN BOURGCHIER, knight, lord Barners. *&c.* Know ye, me the ſaid THOMAS KNYVET, *&c.* do give full power, *&c.* unto THOMAS SCRAGGE, gent. for me, *&c.* to enter into all thoſe maners, lands, tenements and hereditaments in the county of Stafford, which late were unto the ſaid ſir JOHN BOURCHIER lord Barners, or his aſſignes, *&c.* dated 27 May in the thirteenth year of Queen ELIZABETH, *&c.* H h h Ex autog.

THOMAS KNYVET.

ELIZABETHA Dei gratia Angl. Franc. & Hiber. Regina, &c. Omnibus, &c. Cum JOHANNES WOLMER generoſus termino S. Hillarii A. R. noſtri ſextodecimo per finem in curiâ noſtra, &c. de Banco levat. acquiſivit. &c. de THOMA KNYVET arm' inter alia, maneria de Colcirke als Colcreke, North-cyrke als North-creke & Gateley in Norff. & 60 meſſuagia, 10 tofta, &c. ibidem quorum quidem premiſſorum percella, ſcill. maner. de Gatley tenetur de nobis in capite, &c. que quidem alienatio facta fuit licentiâ regiâ inde prius non obtentâ, ſciatis, &c. quod nos, &c. pro 66. ſol. octo denar. pardonamus, &c. Tranſgreſſionem, &c. Teſte, &c. 24 Julij anno regni noſtri viceſimo primo. 24 Julij 21 Eliz. I i i Ex autog.

Queen ELIZABETH her progreſs into Suffolk, Norfolk, *&c.* Auguſt 1579. in the 21 year of her reign. Now to come to the return of the Queen's Majeſty from Norff. and Suff. in which two counties ſhe knighted certain gentlemen, in Suff. in Norff. ſir THOMAS KNYVET, *&c.* HOLLINSHEAD's chronicle by HARRISON, p. 1298.

In magno rotulo de anno 21. Regine nunc ELIZ. in item Norff. &c. Norff. 21 Eliz.

THOMAS KNYVETT, miles, vic. com. præd. computans de exitibus officii ſui à feſto S. Michaelis archangeli anno regni domine noſtre nunc ELIZ. Dei gratia Angl. Franc. & Hibernie Regine, &c. 21. uſque idem feſtum ex tunc prox' ſequen. anno regni ſui 22. pro uno anno integr. &c. THO. KNYVET, mil. vic. Norff. K k k Ex autog.

ELIZ. &c. Omnibus, &c. Sciatis quod commiſſimus, &c. dilecto & fideli noſtro THOME KNYVETT, militi, com. noſtr. Norff. quandiu nobis placuerit, &c. In cujus, &c. Teſte 23 die Novembris anno regni noſtri viceſimo ſecundo. 22 Eliz. THO. KNYVET, mil. L l l Ex autog.

ELIZ. &c. dilecto & fideli THOME KNYVETT, militi, nuper vic. com. noſtri Norff. ſalutem. Cum commiſſerimus dilecto, &c. EDWARDO CLERE, militi, com. noſtrum præd. cuſtodiend. quamdiu nobis placuerit, tibi precipimus quod eidem EDWARDO com. præd. &c. una cum rotulis, brevibus, &c. in cuſtodia tua, &c. per indenturam liberes, &c. Teſte, &c. viceſimo primo die Novembris anno regni noſtri viceſimo tertio. 23 Eliz. M m m Brev. direct. THO. KNYVET, mil. nuper vic. ad deliberand. com. Norff. EDW. CLERE, mil. vic. Ex autog.

Noverint, &c. nos THOMAM KNYVETT de Aſhwellthorp in com. Norff. militem, & THOMAM KNYVETT filium & heredem dicti THOME, MARTINUM SEDLEY de Morley in com. præd. ar' & HENRICUM KNYVET de London, generoſum, teneri, &c. HUGONI HARE de interiori Templo London. ar' in ducentis libris, &c. Dat. 28 die Julij anno regni regine ELIZ. 32. 32 Eliz. N n n THO. KNYVET, knt. and THOMAS his ſon.

The condition to ſave harmleſs HUGH HARE, from ſeveral obligations, *&c.*

Noverint, &c. Nos THOMAM KNYVET de Aſhwellthorp, militem, & THO- Ex autog.

30 Eliz. O o o. Ex autog.

MAM KNYVET de Thornage in com. præd' arm' filium & heredem dicti THOME KNYVET, militis, & ROBERTUM NEWMAN de Funell als. Fundenhale yeoman teneri, &c. RICHARDO MARTYN de Hapton in com. præd. yeoman in 400*l.* Dat. 25. Febr. anno 39 ELIZ. & 1596.

Condition for the payment of money.

Trin. Term. 6 JACOB. P p p

Hec eſt finalis concordia facta in curia domini Regis, &c. à die S. Trinitatis in tres ſept. anno regni JACOBI Regis Angl. &c. ſexto, &c. Inter EDMUNDUM MUNDFORD, militem, THOMAM HOLLAND, militem, & MARTINUM SYDLEY, jun. arm. quer. & THOMAM KNYVETT, militem, defunct. maner. de Aſhwellthorp, Wreningham, Nelond alias Newland, Belhouſe in Neland, Fundenhall & Hapton 16 meſ. &c. & x. librat. reddit. in eiſdem, & aliis villis in Norff. & advocat. eccleſiarum Wreningham cum Nelond, & Aſhwellthorp, &c. Jus EDMUNDI, &c.

15 JAC. 1. A. D. 1617. Q q q Sir THOMAS KNYVET and THOMAS his grandchild.

Be it known, *&c.* That I ſir THOMAS KNYVET of Aſhwellthorp in Norff. knight, have given and granted, *&c.* unto my well beloved grandchild THOMAS KNYVET, of the ſame town and county, eſq; all and ſingular, ſuch debts as now, or hereafter may become due to me by any obligations, bills, recognizances, *&c.* or any other thing, *&c.* To the only uſe and behoof of my grandchild THOMAS KNYVET his executors, *&c.* Dated the 28 of January, in the 15 year of the reign of King JAMES the firſt, and in the year 1617.

Report of ſir THOMAS KNYVET's claim to be lord Berners.

May it pleaſe your moſt excellent Majeſty.

The clayme of ſir THO. KNYVET, knight, to the barony of Berners.

Whereas it pleaſed your highneſs to commit unto us the hearing of a clayme, made by ſir THOMAS KNYVET, to be lord Berners and a peer of this your Majeſties realm of England; we have according to your Majeſties commandment in that behalf, called the petitioner before us; to be fully informed of the proofs of his ſaid clayme, whereby we do underſtand, That JOHN BOURCHIER, being the younger ſon of WILLIAM BOURCHIER, ſometimes earl of Eſſex, was in the three and thirtieth year of King HENRY the ſixth, your Majeſties progenitor, ſummoned to the parliament by the name of JOHANNES BOURCHIER *de Berners, chivaler,* whereby he did bear the name of lord Berners, which JOHN BOURCHIER lord Berners had iſſue, HUMFRY his eldeſt ſon and heir apparaunt, who had iſſue JOHN, and the ſaid HUMFREY the ſon dyed in the lifetime of the ſaid JOHN, his father, whereby JOHN the grandchild, after the death of JOHN his grandfather, being in ward, was called lord Berners, and after he came of full age, was likewiſe ſummoned to the parliament by the name of JOHANNES BOURCHIER *de Berners, chivaler,* and this JOHN the grandchild, lord Berners, had iſſue JANE, married to EDMUND KNYVET, and dyed in the four and twentieth year of king HENRY the VIIIth at Calys, where he was then deputy, which EDMUND KNYVET had iſſue JOHN KNYVET, who dying in the life of his mother, SOLE daughter and heir to the ſaid JOHN BOURCHIER, lord Berners, was not in that reſpect ſummoned to the parliament, and this JOHN KNYVET, had iſſue ſir THOMAS KNYVET, the now petitioner to your Majeſty, which ſir THOMAS KNYVET, for the cauſes aforeſaid, we cannot but acknowledge is deſcended by the daughter and SOLE heir of noble parentage, and whoſe clayme we think, under your Majeſties moſt gracious favour, to be a juſt clayme, the dignitie beginning and commencing by writ of ſummons only; and ſo with all humility, we do refer the ſame to your Majeſties more gracious pleaſure, ſubſcribing theſe preſents in all reverent ſubmiſſion, with our ſeveral hands.

R r r J. 26. in the office of arms.

Taken from a copy ſent to Mr. LE NEVE ROUGECROIX from the heirs of THO. KNYVETT, eſq; and examined therewith, 31 Oct. 1694. Id. GREG. King, Lanc.

Nottingham, Suffolk, E. Worceſter, H. Northampton.

We the Kings of arms and heralds, whoſe names are here ſubſcribed, do

teſtify

teſtify this to be the true relation of that which paſſed before your lordſhips in this clayme, for the right and title of the lord Berners.

WILLIAM CAMDEN, Clarenceux King of arms,
RIC. St. GEORGE, Norroy King of arms.

The entry of this in the college of arms is thus ſubſcribed.

This is a true copy of the original remayning in the hands of THOMAS KNYVET of Aſhwellthorpe in the county of Norfolk, ſon and heir of ſir THOMAS KNYVETT, knight, ſon and heir of ſir THOMAS KNYVET, knight, who made claym to the title of lord Berners as above expreſſed.

WILL. RYLEY, Lancaſter.
WILL. CROWN, Rougedragon.
ROB. BROWN, Blewmantle.

In the name of God, *&c.* I ſir THOMAS KNYVET of Aſhwellthorp, in the county of Norff. knight, do make and ordain this my laſt will and teſtament in manner and form following, *&c.* Firſt, I comit my ſoul, *&c.* my body to be buried at the diſcretion of my executor. *Item*, I give unto THOMAS KNYVET, eſq; my grandchild, and to his heirs for ever, all and ſingular my goods and chattles, houſhold ſtuffe, money, plate jewells, moveables and immoveables, *&c.* and all my lands both free and copy-hold tenor, and all my tenements, manors, grounds, houſes, of what nature, *&c.* ſoever. *Item*, I give, *&c.* all my jewells, borders and chains of gold which were my late wifes, unto ABIGAIL MUNDEFORD, KATHERINE PASTON, and MURIEL BELL, my three daughters, to be equally divided amongſt them. *Item*, I give, *&c.* to my ſiſter ELIZABETH ASHFIELD for life, one annuity of ten pounds to be paid yearly, *&c.* *Item*, to ABIGAIL ASHFIELD her daughter, one hundred pounds to be paid in one month after her marriage. *Item*, I give to EDMUND KNYVET my ſon two obligations, wherein WILLIAM WEBB of Eweſton in Suff. gent. is bound to me in two ſomes of 200 *l.* for payment of one in each, alſo to him 200 *l.* to be paid within one year after my deceaſe, with an annuity of fourſcore pounds *per annum*, payable out of the manor of Hapton in Norff. for his life, *&c.* all the reſt of my money, goods, chattles, *&c.* whatſoever not before bequeathed, I give to THOMAS KNYVET, eſq; my grandchild, whom I make my ſole executor of this my laſt will and teſtament, *&c.* Dated the 30th of January, 1617.

Sir THOMAS KNYVET his will, 30. Jan. 1617.

This will was proved, and adminiſtration granted to the ſaid THOMAS KNYVET, executor, the 6th of March, 1617.

Ex reg. cur. prærog. reg. Mead. Q. 23.

Inquiſitio capt. apud caſtrum Norwic. &c. 26 die Auguſti anno regni regis JACOBI &c. 16. coram HENRICO BRANTHWAYT, armigero, feodario, &c. & JOHANNE SPALDING, armigero, eſcheatore, &c. virtute commiſſionis, &c. in natura brev. de diem clauſit extrem' poſt mortem THO. KNYVET, militis, defunct. per ſacramentum, &c. qui dicunt ſuper ſacramentum ſuum quod prædict. THO. KNYVET, miles, ſeiſitus fuit in dominio ſuo ut de feodo in manerio de Aſhwellthorp cum juribus, &c. & in advocarionibus eccleſiarum Thorp, Nelond & Wreningham cum capella St. Mariæ de Aſhwell eidem manerio pertinen' ac in maneriis de Nelond & Fundenhall, &c. Hapton, Tharſton, Wreningham, & in Meſſuagio vocat. le Fryers in parochia St. Petri Perminter-gate in civitate Norwic. meſſuag. prope foſſat caſtri Norwic. in parochia St. Martini de Ballio & prædict. THO. KNYVET obiit nono die Februarij ult. preteterit. & quod THO. KNYVET, arm' eſt conſanguineus & proximus heres predict. THO. KNYVET, militis, viz. ſon and heir of ſir THOMAS KNYVET, knight, deceaſed, who was ſon and heir of the ſaid ſir THOMAS KNYVET, knight, and that the ſaid THOMAS KNYVET, eſq; was twenty two years old and more at the taking the inquiſition, *&c.*

Norff. 26. Aug. 16 JAC. I. Inquiſitio poſt mortem THO. KNYVET, militis.

T t t

Aſhwellthorp, Noland, Wreningham, Hapton, Tharſton. heir THO. KNYVET, eſq; 22 years old and more. Ex inquiſitione.

U u u

An

Ex autog. An inventory of his goods taken the 10th of February, 1617, apparel, 100 *l.* books printed and written, 700 *l. &c.* ſum total of the inventory, 7898 *l.* 14 *s.* 4 *d.*

Sir THOMAS KNYVET, lord of the manor, was buried the ninth day of February, 1617. *Ex regiſtro eccleſie Thorp.*

Lady MURIELL KNYVET, wife of ſir THOMAS the elder.

17 Decem. 14 JAC. I. Ex autog. X x x

Leaſe of the moiety of ſir THOMAS PARRY his lands to ſir THOMAS KNYVET, during the minority of his grandſon THOMAS KNYVET, eſq; coſin and coheir of ſir THOMAS PARRY.

INdenture made the 17th of December, in the 14th year of king JAMES the firſt, between the moſt excellent Prince, *&c.* JAMES, *&c.* King of England, *&c.* of the oon partie, and ſir THOMAS KNYVET of Aſhwellthorp, in the county of Norfolk, knight, of the other partie; witneſſeth, that our ſoveraign lord the King, *&c.* doth demiſe, grant, *&c.* to ſir THOMAS, parcell of the lands and poſſeſſions late of ſir THOMAS PARRY, knight, deceaſed, in the county of Berks, *&c.* the moiety of the manors of Welford and Boxcore *alias* Boxworth, and of the advowſons of the chutches there, the moieties of the manors of Holbenham, *alias* Howkenholm and Eyſton, lands and meſſuages in Hampſted-Marſhall, of the manor of Uffington, of the rectory of Uffington, and advowſon of the vicarage being in the hands of the King, by the minority of THOMAS KNYVET, eſq; his Majeſties ward cozen, and one of the coheirs of the ſaid ſir THOMAS PARRY, to hold from the laſt day of May laſt, when ſir THOMAS PARRY dyed, during the minority of the ward, *&c.*

Decemb. 9. 14 JAC. Y y y

Indenture made between king JAMES the firſt of one partie, and ſir THOMAS KNYVET of Aſhwellthorp, of the other partie, witneſſeth, that the King, *&c.* doth commit and grant unto the ſaid ſir THOMAS and his aſſignes for 500 *l.* fine, the cuſtody, wardſhip and marriage of THOMAS KNYVET, eſq; his highneſs ward coſin, and next heir of ſir THOMAS PARRY, knight, deceaſed, to the uſe of the ſaid ward, and if he dye, then the like of his heirs male, and ſo from heir male to heir male, until effect of the wardſhip and marriage. The extent annext thereto of the value of all the manors, lands of ſir THOMAS PARRY, knight, deceaſed the laſt day of May laſt, *&c.* deſcended to THOMAS KNYVET, eſq; and JOHN ABRAHALL, eſq; his coſins and next heirs, *viz.* The ſaid THOMAS KNYVET being ſon and heir of ſir THOMAS KNYVET, knight, deceaſed, ſon and heir of dame MERIELL KNYVET deceaſed, late wife of ſir THOMAS KNYVET, one of the ſiſters and heirs of the ſaid ſir THOMAS PARRY; and the ſaid JOHN ABRAHALL, ſon and heir of FRANCIS ABRAHALL deceaſed, late wife of JOHN ABRAHALL, another ſiſter and heir of the ſaid ſir THOMAS PARRY; the ſaid THOMAS KNYVET, eſq; being of the age of twenty years three months and three days, and the ſaid JOHN ABRAHALL of the age of 30 years and more, at the finding of the office dated the 13th of September, in the 14th year of king JAMES the firſt, in which it was found, that ſir THOMAS PARRY then eſq; by deed dated the 10th of Auguſt, in the 30th year of queen ELIZABETH, ſettled the manors of Hampſted-Marſhall, Benham-Lovell and Weſtbroke, and lands, *&c.* to the uſe of himſelf and DOROTHY his wife for joynture, and to the heirs males of his body, remainder to ſir THOMAS KNYVET, knight, and the lady MURIELL his wife, one of the ſiſters of the ſaid ſir THOMAS PARRY, and the heirs males of the body of the ſaid lady MURIELL by the ſaid ſir THOMAS KNYVET, *&c.* and the manors of Welford, Eaſton, Holbenham, *alias* Howbenham, Boxore, *alias* Boxworth, Cheveley and Uffington, all in Berks, Uffington rectory, *&c.* and all other his lands, tenements, *&c.* to the uſe of himſelf, and the heirs males of his body; remainder to ſir THOMAS KNYVET, and lady MURIEL as before, and after this *craſt. animarum*, in the ſaid year levyed a fine thereof to the uſes aforeſaid, and after he ſuffered a recovery of all to the uſe of himſelf and his heirs. And that the lady DOROTHY his widdow was living.

THOMAS KNYVET, JOHN ABRAHALL.

Dame MERIEL, wife of ſir THOMAS KNYVET, and ſiſter and coheir of ſir THOMAS PARRY.

THOMAS KNYVET, aged 20 years 3 months.

Ex autog.

I HENRY STACIE, ſervant of ſir THOMAS PARRIE, knight deceaſed, late chancellor of the dutchy of Lancaſter, *&c.* have remiſed, releaſed, *&c.* unto ſir THOMAS KNYVET of Aſhwellthorp, *&c.* knight, JOHN ABRAHALL of Ingſton in the county of Hereford, eſq; and THOMAS KNYVET heir apparaunt unto the ſaid ſir THOMAS KNYVET, *&c.* all right, title, intereſt, *&c.* in the manors, lordſhips, lands, tenements and hereditaments, late the inheritance of the ſaid ſir THOMAS PARRY in Berks, or elſewhere in England, *&c.* dated the 21ſt of July, in the 14th year of the reign of king JAMES, *&c.*

Sir THOMAS PARRY chancel. of the dutchy of Lanc. Sir THOMAS KNYVET, JOHN ABRAHALL, THO. KNYVET, eſq; Z z z Ex autogr. A a a a

To the never dying fame, of that ever living lover of virtue, the right worſhipful the lady MURIEL KNYVET, late wife of the right worſhipful ſir THOMAS KNYVET, knight, who ceaſed to live amongſt mortals, 25th of April, *an. Incarn. Dom.* 1616.

Here Norfolk's Wonder lyes, a Phœnix right,
Who might be term'd for her good Deeds ſo many;
In doing good, who took her chiefſt Delight,
Not caring for vain Treaſure Momentary, *&c.*
Per OLIVER JOHNSONUM, Tyronem Nordowicenſem.

Elegie on lady MURIEL KNYVET.

The Right Worſhipful the lady KNYVET was buried April 26. 1616.
Ex regiſtro parochialis eccleſiæ de Aſhwellthorp.

Sir THOMAS KNYVET the younger, and ELIZABETH his wife.

NOverint, &c. Nos THO. KNYVET de Aſhwellthorp in com. Norff. militem, & THO. KNYVET, arm', filium & heredem domini THO. teneri, &c. domin' ELIZ. BROMLEY, vidue in ducentis libris, &c. dat. ſexto die Julij anno regni reginæ ELIZ. &c. 34. A. D. 1592. See proof O o o where this gent. is called of Thornage.

1592. B b b b

ARticles agreed upon between ſir THOMAS KNYVET, knight, and NATHANIEL BACON, eſq; touching a marriage to be ſolemnized between Mr. THOMAS KNYVET, eldeſt ſon of the ſaid ſir THOMAS and ELIZABETH BACON, ſecond daughter of the ſaid NATHANIEL, the 8th of April, and the 10th of Auguſt 1592. NATHANIEL to pay 2500 *l.* portion, ſir THOMAS to ſettle a rentcharge of 200 marks *per annum* on the young couple for the preſent maintenance and joyntute during ſir THOMAS and his ladies life, and after their deaths 300 *l. per annum* for her joynture.

Articles of marriage, 10 Auguſt, 1592. C c c c

ANNE, eldeſt daughter of NATHANIEL, to have the houſe and land at Stiveky aſſigned to her in tail with remainder to ELIZABETH, *&c.*

THOMAS KNYVET, eſq; ſon of ſir THOMAS KNYVET, knight, was knighted at the Charter-Houſe in Midd. the eleventh day of May, in the year 1603. See PHILPOT's catalogue of knights made by JAMES the firſt, and manuſcripts of knights in the colledge of arms.

A true copy taken out of the regiſter of Feltwell St. Mary in Norfolk, of the burial of ſir THOMAS KNYVET, knight, who was buried the 20th of September, 1605. witneſs my hand ROBERT SIMPSON, rector of Feltwell St. Mary.

D d d d

See the extract of the regiſter of Aſhwellthorp, wherein is the ſame note.

A true and perfect inventory of all and ſingular the goods, cattell, chattells, debts, and ready money of ſir THOMAS KNYVET, *jun.* knight, late whilſt he lived at Aſhwellthorp in the county of Norfolk deceaſed, taken, valued and priſen the eighteenth day of November, in the year of our Lord God 1605. and in the 3d year of the reign of king JAMES, *&c.*

E e e e 18 Novemb. 1603. Ex autogr.

Imprimis. A ſtanding chryſtal cup garniſhed with ſilver and gilt 12 *l. &c.*

Sum total of the inventory, 367 *l.*

Adminiſtration of ſir THOMAS the younger. Ffff 7. May 1609. MERIALL, THOMAS, EDMUND, NATHANIEL, ELIZABETH, ſons and daughters of young ſir THOMAS, all under age. Ex autog.

RICHARDUS providentia divina, &c. Archiepiſ. Cantuar. &c. dil. nobis, &c. domin. THO. KNYVET, militi, patri natli, & legitimo dom. THO. KNYVET, nuper dum vixit de Aſhwellthorp in com. Norff. dioceſs Norwic. noſtreque Cantuar' provinciæ militis defuncti ſalutem. Cum prædict. THO. &c. habens bona, &c. in diverſis dioceſs, &c. Tibi, &c. committimus poteſtatem teque adminiſtratorem omnium & ſingulorum bonorum, &c. (minori etate MERIALLE KNYVET, THO. KNYVET, EDMUNDI KNYVET, NATHANIELIS KNYVET & ELIZABETH. KNYVET, liber. natural. & legitim. ejuſdem defuncti duran.) ordinamus deputamus & conſtituimus per preſentes, &c. Dat. Londini viceſimo ſeptimo die menſis Maij, an. Dom. milleſſimo ſexcenteſſimo nono & noſtræ tranſlationis ann. quinto.

ELIZABETH BACON, widdow of ſir THOMAS KNYVET the younger, knight.

24 June 6 JAC. I. firſt joynture deed Gggg Ex autog.

INdenture dated the 24th day of June, in the 6th year of king JAMES, *&c.* between ſir THOMAS KNYVET of Aſhwellthorp in Norfolk, knight, of the one partie, and dame ELIZABETH KNYVET, widdow, late wife of ſir THOMAS KNYVET, knight, deceaſed, ſon and heir apparaunt of the ſaid ſir THOMAS of the other party, witneſſeth; That ſir THOMAS doth give and grant to the ſaid ELIZABETH KNYVET, one annuity or yearly rent charge of 200*l. per annum*, iſſueing out of the Manors of Neland and Wreningham, *&c.* in Norfolk, to hold to her and her aſſignes from the death of ſir THOMAS PARRY, knight, during the natural lives of ſir THOMAS and dame MERIELL now wife of the ſaid ſir THOMAS, payable half yearly, with a clauſe of diſtreſs, *&c.*

9 Jan. 16 JAC. I. ſecond deed of joynture to dame ELIZ. KNYVET, widdow of ſir Tho. KNYVET, jun. made by her ſon THO. KNYVET, eſq; after the death of his grandfather and father. Hhhh

Indenture dated 9th of January, in the ſixteenth year of king JAMES the firſt, between THOMAS KNYVET of Aſhwellthorp in the county of Norfolk, eſq; of the one part, and dame ELIZABETH KNYVET of Stivekey in the ſaid county widdow, late the wife of ſir THOMAS KNYVET the younger, knight, deceaſed, father of the ſaid THOMAS KNYVET of the other part. Whereas in Trinity term the 19th of June, in the 8th year of the King, it was decreed by the right honourable THOMAS lord Elleſmere, lord chancellor of England, that ſir THOMAS KNYVET, knight, the elder, grandfather of the ſaid THOMAS, party to theſe preſents, ſhould make to the ſaid ELIZABETH a joynture to take effect after the death of the ſaid ſir THOMAS KNYVET the elder, of lands worth 300 pounds by the year, to be ſet out by ſir EDWARD BLENERHASCET, and ſir JOHN HOBERT, knights, *&c.* And whereas they by commiſſion dated the firſt of June, after the decree did ſet out the meſſuage, lands, *&c.* hereafter expreſſed, *viz.* a houſe called Hapton-Hall in Hapton, and the lands therewith uſed, *&c.* with ſeveral other tenements and lands, *&c.* in all amounting to three hundred pounds *per annum*. And whereas the ſaid ſir THOMAS KNYVET the elder, is of late deceaſed, not having perfected the ſaid joynture, by whoſe death the ſaid meſſuages and lands are deſcended to the ſaid THOMAS KNYVET as cozen, and next heir unto the ſaid ſir THOMAS KNYVET the elder. Now the ſaid THOMAS KNYVET, eſq; doth confirm, *&c.* to the ſaid ELIZABETH the ſaid meſſuages, lands, *&c.* for her life, *&c.*

Ex autog.

18. Nov. 1625. Privy ſeal for loan of 10*l.* Iiii

Truſty and well beloved, *&c.* having obſerved, *&c.* that the Kings and Queens of this our realm, *&c.* have uſed to reſort to thoſe contributions which ariſe from the generality of ſubjects, or to the private helps of ſome well affected in a particular way of loane, *&c.* We are inforced to proceed in the latter courſe, for ſupply of ſome portion of treaſure, *&c.* and therefore do require of you the ſum of ten pounds by way of loan, which we do promiſe to repay you within eighteen months after payment to be paid to ſir THOMAS HOLLAND, or ſir ANTHONY DRURY, knights collectors, to ſend it within 12 days, *&c.* Given under our privy ſeal 18 November, in the firſt year of our reign, *anno Domini* 1625.

To

To our truſty and well beloved THOMAS KNYVET, of Aſhwellthorp, eſq;

21 Jan. 1625. THOMAS earl of Arundells letter to THOMAS KNYVET, eſq; to receive the honour of knight of the Bath, at the coronation of king CHARLES the firſt.

AFter my hearty commendations, *&c.* Whereas it has pleaſed his Majeſty to appoint the 2 day of February next, for the ſolemnity of his royal coronation, with that of his dearly beloved conſort the Queen. And whereas his Majeſty is further graciouſly pleaſed to advance certain of the nobility and prime gentry unto the honourable order of knighthood of the Bath, and amongſt others hath vouchſafed to nominate you for one of that number. Theſe are therefore in his Majeſties name to will and require you to give your attendance on his ſaid Majeſty, at his palace of Weſtminſter, the 30 day of this inſtant January, furniſhed and appointed as in ſuch caſes appertaineth, there to receive the ſaid order of knighthood of the Bath, at his Majeſties hand. Whereof you are not to fail. And ſo I bid you heartily farewel.

Whitehall 21 January, 1625. Your very loving friend

To my very loving friend,
Mr. THOMAS KNYVET of
Aſhwellthorp in Norfolk. Arundell and Surrey.

20 March 1653. THO. KNYVET, eſq; and JOHN his ſon. L111 Ex autog.

A particular of ſuch lands as I will aſſure upon my ſon JOHN KNYVET upon his marriage, *Imprimis*, 4 Mannors, *viz.* Aſhwellthorp, Wreningham, Fundenhall and Hapton, the Quit rents of them all about forty pounds *per annum*, the profits of the courts, the copyholds being arbitrary, amounts to, *communibus annis*, fifty pounds; my manſion-houſe and homeſtalls, my park and lands adjoyning now in my own hands, worth to be lett *per annum*. 80 *l.* The patronages of two churches, worth together 120 *l.* with ſeveral particulars of lands mentioned, the total whereof *per annum*, 1000 *l.* and 10 *s.*

Mmmm

THOMAS KNYVET; eſq; dyed at Henham-hall in Suffolk, the ſeat of his ſon in law ſir THOMAS ROUS, knight and baronet, 30 of June, and was buried at Aſhwellthorp, July the 2. 1658. Abſtract of Aſhwellthorp church-regiſter.

In the chappell on the north-ſide of the chancell of the pariſh-church of Aſhwellthorp in Norff. on a black marble grave-ſtone.

Nnnn

HIC jacet inſignis heros THOMAS KNYVET,
Armiger, Baro hereditarius de Berners.
Titulo, à JANA filiâ JOHANNIS BOURCHIER
Baronis de Berners, traducto. Virtutibus
Publicis, Privatis, Sincero Numinis cultu,
Moribus antiquis, priſcâ animi indole,
Ac veteri Proſapiâ illuſtris, leniori
Seculo & fælici CAROLI Secundi
Poſtliminio dignus. Sed exhalanti
Monarchiæ vix Superſtes, Diſtichon
Hocce, generoſi Animi Specimen, proprio
Calamo exaratum, Poſteris legavit.

Ex monumento.

Here lyes Loyal KNYVET, who hated Anarchy,
Liv'd a true proteſtant, and dyed with Monarchy.
Obiit Junij 30. 1658.

KATHERINE daughter of THOMAS lord BURGH, wife of THOMAS KNYVET, eſq;

Oooo

Good Sir,

UNderſtanding the old lady BURGH is departed, and my old friend Mr. BEARBLOCK being with me about his extent againſt Starburgh caſtle, and other the lands late of THOMAS lord Burgh, the rather for that I underſtand the lady

Burgh

Burgh your mother hath gotten into poſſeſſion of Sterburgh-caſtle, by vertue of
Ex autogr. a leaſe made to her, *&c.* I know Mr. ſerjeant RICHARDSON will ſtrive to get this extent, *&c.*

To THOMAS KNYVET, eſq; at his houſe in Aſhwellthorp, Norff. Your aſſured friend,

RICHARD HOLMAN.

Worthy Sir, Aſhwellthorp 22 Auguſt, 1622.

Pppp I Was at Stanfield to have conferred with you concerning the buſineſs of Star-
burgh, the old lady being dead, *&c.* I deſire to know whether you purpoſe
Ex autogr. to withſtand my lady Burgh's claim or no, or if you pleaſe to purchaſe our part, you ſhall if we can agree of the price, *&c.*

To ſir THOMAS RICHARDSON, knt. at Breckells. Your aſſured friend,

THOMAS KNYVET.

To my very loving ſon Mr. THOMAS KNYVET, at his houſe at Thorp, This

My good ſon,

Qqqq I Am ſo much beholding to you, *&c.* Your loving mother whilſt I breth,
Ex autog.

F. BURGH.

Good couſin, without date.

Rrrr THere is no day but bringeth forth his ſorrow, *&c.* my grandmother's death I fear will bring trouble to us, I wiſh with all my heart Mr. KNYVET may have patience to ſuffer my mother to do what ſhe pleaſeth for her life, or rather that he had ſold his part to ſerjeant RICHARDSON; *&c.* I pray enquire, *&c.* whether my lady goes down to Starburgh, *&c.*

To my very worthy coſin ANTHONY KNYVETT, Theſe. Your ever faithful friend,

KATHERINE KNYVETT.

Ssss Inquiſitio capt. apud Southwark, in Surr. 30. die Maij anno regni reginæ
30 Maij 40 ELIZABETH. &c. quadrageſimo coram WILLIELMO MILLES, eſchaetore, &c.
Eliz. virtute brevis de diem clauſit extremum, &c. poſt mortem prænobilis THOMÆ
Inquiſition after the death of THOMAS lord Burgh, proving his death, mother KATHERINE, wife FRANCES, and ſon ROBERT, lord Burgh. domini Burgh baronis de Gainsburgh preclariſſimi ordinis garterii, militis, defunct. per ſacrum. E. K. &c. qui dicunt, &c. quod prædict' THOMAS dominus Burgh diu ante obitum fuit ſeiſitus poſt mortem KATHERINÆ dominæ Burgh, viduæ, modo ſuperſtitis in reverſione caſtri de Starburgh in Surr. maner. de Starburgh & Prinkam ibidem diverſ. tetr. &c. ibm. & in aliis villis in Surr. & Suff. maner. & firmar. de Leighton in Cowden in Kant. Surr. & Suff. & Cobham, Chedyngſton, & Tyhurſt in Kant. & Goodhurſt Ferm in Surr. & Suſſ. & præd. THOMAS dominus Burgh per cartam dat. 4 Martii 29 ELIZ. dimiſit, &c. omnia præd. caſtr. maner. &c. HENRICO KNYVETT, militi, THOME KNYVETT, armigero, habend. poſt deceſſum præd. THOME domini Burgh & KATHERINE domine Burgh ad terminum octoginta annor. ſi FRANCISCA domina Burgh tunc uxor ejuſdem THOME domini Burgh, modo vidua, tam diu vivere contingeret, &c. Et dicunt quod præd. THOMAS dominus Burgh obiit ſeiſitus reverſionum præd. (except. maner. de Leighton in Cowden) decimo quarto die octobris ult. præt. Et quod ROBERTUS, modo dominus Burgh, eſt filius & heres ætatis 3 annor. die Auguſti ult. præt.

Ex copia inquiſitionis in capella rotlor.

Indenture

Indenture made 24 June in the 19 year of the reign of king JAMES; between THOMAS KNYVETT of Aſhwellthorp in Norff. eſq; and KATHERINE his wife, on the one part, and ANTHONY KNYVET of the city of Weſtmin. *&c.* eſq; on the other part. Whereas THOMAS KNYVETT and KATHERINE, in Eaſter-term laſt paſt, did acknowledge three ſeveral fines in the Common Pleas to the ſaid ANTHONY, of the fourth part of the caſtle of Starburgh, and of the fourth part of the manors of Starburgh, Prinkam, and Leighton in Cowden, and of the fourth part of 100 meſſuages, 100 tofts, *&c.* and ten ſhillings rent in Lynfeld, Crowhurſt, and other towns in Surrey; of the fourth part of the manor of Leighton in Cowden; of one meſſuage, *&c.* in Grenſted, Wykham, and Harefield in Suſſex, of the fourth part of the manors of Chedyngſton, Cobham, Tyhurſt and Leighton in Cowden, and of 9 meſſuages, *&c.* and one hundred ſhilligns rent in Chedyngſton, Tyhurſt, and other towns in Kent. Now this indenture witneſſeth that the ſaid fines ſhall be and inure to the ſaid ANTHONY KNYVET and his heirs to the uſes following only, *viz.* To the uſe of the ſaid THOMAS KNYVET and KATHERINE his wife, and of the heirs of their bodies lawfully begotten, or to be begotten, and after of the heirs of the body of KATHERINE, remainder to the heirs of the body of THOMAS, to be begotten, remainder to the right heirs of THOMAS. In witneſs, *&c.*

24 Junii 19 Jac. ſettlement by fines levied of Starburgh-caſtle, and the 4th part of the lord Burghs lands, by THO. KNYVET and KATHERINE his wife.

Ttt t

Ex autog.

Indenture dated 15 day of May in the ſecond year of king CHARLES the firſt; between THOMAS KNYVET, eſq; of Aſhwellthorp in Norff. and KATHERINE his wife, one of the four daughters and coheirs of THOMAS lord Burgh, the elder, deceaſed, and one of the ſiſters and coheirs of THOMAS lord Burgh, the younger, ſon and heir of the ſaid THOMAS lord Burgh, the elder, likewiſe deceaſed, on the one part, and ſir THOMAS RICHARDSON, knight, ſerjeant at law, on the other part. Witneſſeth, That the ſaid THOMAS KNYVET and KATHERINE, bargained and ſold for the conſideration of 860 pounds, all that their fourth part of the caſtle and manor of Starburgh, and all the other manors, lands, tenements, rents, *&c.* in the deed before mentioned to the ſaid ſir THOMAS RICHARDSON, his heirs and aſſignes for ever, *&c.*

Uuuu

15 May 2 CAR. I. Sale of the 4th part of the lord Burghs lands aforeſaid by THO. KNYVET and KATHERINE his wife, ſiſter and coheir of THO. lord Burgh.

Ex autog.

KATHERINE KNYVET the wife of THOMAS KNYVET, eſq; buried May the firſt, 1646. *Ex reg. eccl. Aſhwellthorp.*

Wwww.

Sir JOHN KNYVET, knight of the Bath, at the coronation of king CHARLES the 2d, and MARY BEDINGFIELD his wife.

Indenture of releaſe, dated the 7th day of June, in the year 1655. Between THOMAS KNYVET of Aſhwellthorp in Norff. eſq; of the firſt part, ſir THOMAS BEDINGFIELD of Darſham in the county of Suff. knight, on the ſecond part, JOHN KNYVET, gent. ſon and heir apparant of the ſaid THOMAS KNYVET, of the third part, and MARY BEDINGFIELD, eldeſt daughter of the ſaid ſir THOMAS BEDINGFIELD, on the fourth part. Whereas the ſaid THOMAS KNYVET, by his indenture dated the ſixth day of June, in the ſaid year 1655. hath bargained, ſold, *&c.* for one year, unto the ſaid ſir THOMAS BEDINGFIELD, *&c.* all thoſe his mannors and lordſhips of Aſhwellthorp and Wreningham, Neland, Fundenhall, and Hapton in the county of Norff. and the advowſons of the rectorys of Aſhwellthorp and Wreningham, *&c.* with many farms, lands, woods, *&c.* And whereas there is a marriage by God's permiſſion ſhortly to be had and ſolemnized between the ſaid JOHN KNYVET, and the ſaid MARY BEDINGFIELD. Now this indenture witneſſeth, that in conſideration of the ſaid marriage, and of a joynture to be had for the ſaid MARY BEDINGFIELD, and four thouſand pounds portion, *&c.* The ſaid THOMAS KNYVET doth grant, bargain, ſell, releaſe and confirm to the ſaid ſir THOMAS BEDINGFIELD, his heirs and aſſignes, all the ſaid manors, advowſons, lands, tenements, *&c.* To hold to the ſeveral uſes herein after limited, *viz.* To the uſe of THOMAS KNYVET and his heirs, till the marriage of JOHN and MARY, and after as to Hapton-hall, and ſeveral meſſuages, *&c.* to JOHN KNYVET and MARY his wife for their lives, after to the

7 June 1655. Marriage articles between THO. KNYVET, JOHN his ſon, and MARY daughter of ſir THO. BEDINGFIELD.

Xxxx

heirs of the body of the ſaid JOHN, on the body of the ſaid MARY to be begotten, and after to the right heirs of the ſaid THOMAS the father, and the manors, advowſons, and other meſſuages, lands, *&c.* to the uſe of THOMAS the father for life, and then to the ſaid JOHN KNYVET and the heirs males of his body, after to the right heirs of THOMAS, *&c.*

Ex autog.

Sir JOHN KNYVET, knight of the Bath, deputation for being deputy lieutenant of Norff. under HORACE lord Townſhend 22 Sept. 1662.

To all to whom, *&c.* HORACE lord Townſhend, baron of Lyn Regis, ſendeth greeting. Whereas his moſt excellent Majeſtie, according to the act of parliament for ordering the militia, hath by commiſſion under the great ſeal, nominated me his lievetenant in the county of Norff. *&c.* And whereas ſuch lievetenants have power to preſent the names of ſuch perſon or perſons as they ſhall think fit to be deputy lievetenants, *&c.* I do hereby nominate and appoint THOMAS, lord Richardſon, ſir PHILIP WOODHOUSE, baronet, *&c.* ſir JOHN KNYVET, knight of the Bath, *&c* and others therein named, my deputy lieutenants, for and in the county of Norff. *&c.* dated the 22 day of Sep. in the 14 year of the reign of king CHARLES IId, A. D. 1662.

Yyyy

Ex autog. 16 May 1673. Sir JOHN KNYVET's will.

In the name of God, Amen, I ſir JOHN KNYVET of Aſhwellthorp in the county of Norff. knight of the Bath, *&c.* do ordain this for my laſt will and teſtament, &c. my body to be interred without any ſolemnity in the eaſt end of that chappel, in the church of Aſhwellthorp, belonging to our family; for my worldly eſtate, I do order, firſt my debts to be paid, &c. and my lands in mortgage ſet apart therefore, and for raiſing portions by ſale thereof or otherwiſe for my younger children. I give and deviſe unto ſir ROBERT KEMP of Ubbeſton in Suff. baronet, to my brother in law ſir NEVIL CATLYN of Kirbycame in Norff. knight, and kinſmen EDMUND BEDINGFIELD of Halſworth in Suff. eſq; and HENRY BEDINGFIELD of Halſworth, eſq; and to their heirs my manors of Aſhwellthorp, Wreningham, Hapton, and Fundenhall, Norff. The advowſons of Aſhwellthorp and Wreningham, the farm in Mrs LEGARD's occupation, except the headhouſe, homeſtall, gardens, orchards, park with deer and paddock in truſt for my ſon JOHN; JAMES CLARKE's farm, in truſt for my daughter ELIZABETH; other lands in truſt for my daughter KATHERINE; HAWS marſh, &c. in truſt for my daughter MARY; WOODS in truſt for my daughter JANE; other lands in truſt for my daughter MURIELL; the lands ſettled on JOHN if he dyes without iſſue, under age, to go to his ſon and heir THOMAS KNYVET, and his heirs; and ſo if the daughters die un-married, with a proviſion, that if his ſon THOMAS pay to JOHN at 24 years old or before, and at 21 years old to my daughters ELIZABETH, KATHERINE, MARY, JANE and MURIELL, 1000 *l.* each, and fifty pounds each, *per annum*, for maintenance till money paid, then THOMAS to have the lands ſettled on them. I give ten pounds each to thoſe truſtees only who except the truſt. I give to my dear wife dame MARY KNYVET, all my perſonal eſtate, except arrears of rent exceeding 100 *l.* pictures, ſaphires, my fine limned book, at my cozen BURREL's at London, trunk of prints, and coynes, armory, my two libraries at Aſhwellthorp, and Darſham, leaſes not to be reckoned as chattells. *Item.* If my two ſons THOMAS and JOHN dye without iſſue, then I bequeath to my dear nephew JOHN KNYVETT 1000 *l.* And to my cozen JOHN KNYVET of Fundenhall 100 *l.* and if my nephew JOHN dyes without iſſue, I order the lands in Mutford in Suff. to be ſold to pay debts. I remit to my ſiſter LEGARD, the ten pounds I paid for her, *viz.* five pounds for herſelf, five pounds to my nephew and godſon, her ſon ROBERT LEGARD. I give to my neice ANNE LEGARD, a box of drawers her mother hath; to my mother in law lady Bedingfield a ring; to my dear neice Mrs. KATHERINE ROUS a picture of my mother. To my dear neice LETTITIA ROUS, my great grandfather's picture. To my dear nephew ſir JOHN ROUS, OGILBY's VIRGIL. To my nephew JOHN KNYVET, latin Bible. To my neice ELIZABETH BEDINGFIELD, COWLEY's Poems. To my neice and god-daughter PHILIPPA BEDINGFIELD an ivory ſtandiſh. To my nephew THOMAS BEDINGFIELD, SPEED's maps. To my neice and god-daughter ELIZABETH CATELYNE a cabinet. To each ſervant at death a year's wages, &c. To the poor of Darſham, Dunwich, Weſtleton

Zzzz

JOHN, ELIZABETH, KATHERINE MARY, JANE and MURIELL.

THOMAS ſon and heir.

Dame MARY KNYVET wife.

JOHN KNYVET nephew; JOHN KNYVET of Fundenhall, cozen: ſiſter LEGARD; nephew ROB. LEGARD; neice ANNE LEGARD.

ROUS.

BEDINGFIELD.

in Suffolk, Wymondham, Aſhwellthorp, Wreningham, Fundenhall, each five pounds. To the poor of Hapton 3 *l.* &c. Laſtly, I do make my dear wife dame MARY KNYVET my ſole executrix, and appoint her to receive the rents of my whole eſtate till my ſon THOMAS be twenty four years of age, ſhe allowing him what ſhe thinks fit till then, and with that eſtate, and felling of timber to pay my debts and legacies, &c. This my laſt will and teſtament, all writ with my own hand, and finiſhed the 16th day of May, in the 25th year of king CHARLES the ſecond, *Ann. Domini*, 1673.

J. KNYVET.

Proved at London, Feb. 13. 1673. before ſir LEOLINE JENKYNS, knight, LL. D. &c. in the prerogative court Canterbury, and adminiſtration granted to dame MARY KNYVET executrix, &c.

Ex exemplificatione ſub ſigillo curiæ & regiſtrat. regiſtro BUNCE, Q. 29.

In the chappell on the north ſide of Aſhwellthorp church in Norfolk, towards the eaſt end, which is raiſed one ſtep, on a black marble-ſtone, with the arms and creſt of the family cut at the upper-end thereof, this inſcription under it. A 5

JOHANNES KNYVET.

BAro hæreditarius de Berners,
A CAROLI poſtliminio Eques Balnei,
Antiquum Genus Virtute inſignivit,
Ad Exteras Gentes peregrinando,
Selectiſſimos condivit Mores,
Doctrinam coluit & occuluit,
Ritu Solemni adoravit Numen,
Regi fidelitatem late teſtatus,
Altare ditavit Dei Elemoſinarius.
Optimis auſpiciis uxorem duxit
MARIAM filiam THOMÆ BEDINGFIELD Equitis,
Conjugalis amoris Nobile Exemplar.
Sic Phœnix in Cineres redactus
Æternam manens Renovationem.
Obiit Julii 28. 1673. Hic jacet.

Tranſcript. & examinat. cum originali in eccleſia prædict.

The noble knight ſir JOHN KNYVET was buried July the 30th, 1673. Ex reg. eccleſie parochialis de Aſhwellthorp. B 5

Sir JOHN KNYVET's lady dame MARY, one of the daughters of ſir THOMAS BEDINGFIELD of Darſham in Suffolk.

See the deed of ſettlement on the marriage with ſir JOHN before recited, dated the 7th of June, 1655. Sir JOHN's will dated 1673. &c. Z z z z. X x x x. 16 October 1710.

The will of dame MARY KNYVET. C 5

I Dame MARY KNYVET, of Weſton-Markett in the county of Suffolk, widdow, do make this my laſt will and teſtament in manner following, &c. My body to be interred in the vault of Aſhwellthorp chancell, as near my husband's body ſir JOHN KNYVET knight of the Bath, as poſſible. I give to my dutiful and loving daughter CATHARINE, wife of RICHARD BOKENHAM, eſq; all my eſtate, real and perſonal whatſoever, of what kind ſoever, ſubject to the payment of the legacies in the will, and in purſuance of the laſt will of my loving daughter MARY KNYVET deceaſed, I recommend the care and education of my cozen LUCY KNYVET an infant to her untill 21 years old, &c. and when of age to have 1500 *l.* portion; if ſhe dye before, the legacy void. Then I give to her ſiſter my cozen ELIZABETH KNYVET, the ſum of five hundred pounds. *Item*, I give to my grandſon THOMAS GLEMHAM, eſq; 500 *l.* &c. To my ſon-in-law RICHARD BOKENHAM, eſq; my ſon-in-law OLIVER LE NEVE, eſq;

MARY KNYVET, daughter deceaſed.
LUCY KNYVET, cozen,
ELIZ. KNYVET, cozen,
THOMAS GLEMHAM.
RICHARD BOKENHAM ſon in law,
OLIVER LE NEVE, ſon in law, JOHN

and Paston Knyvet, cozens. Ex ipsa exemplificatione. D 5

esq; and to my cozen John Knyvet, esq; 20 *l.* each for mourning: To my cozen Paston Knyvet, esq; the like sum; to the poor of Ashwellthorp 8 *l.* of Darsham 8 *l.* of Weston-Market 4 *l.* poor of Hapton, Wreningham and Fundenhall 4 *l.* each. I constitute my said daughter Catherine Bokenham, to be sole executrix hereof. In witness, &c. dated the 16th of October 1710. in the 9th year of the reign of queen Anne, &c.

Mary Knyvet.

Proved before Thomas Tanner doctor of divinity, chancellor of Norwich, the 5th of August, 1713. at Bury, and administration granted to Catherine Bokenham executrix, &c.

In the church of Ashwellthorp, and in the chappell aforesaid, on a black marble-stone, this following inscription.

Here lyeth the Body of Dame Mary Knyvet, wife of sir John Knyvet, Knt of the Bath, departed this Life the 18th day of April 1713. being in the 80th Year of her Age.

The lady Knyvet buried April the 21st, 1713. out of the register of that parish.

Thomas Knyvet, son of sir John Knyvet.

23 Sept. 1693. settlement of Thomas Knyvet, son and heir of sir John. E 5

Indenture quadripartite dated 23d of September 1693. and in the 5th year of the reign of king William and queen Mary, between Thomas Knyvet, esq; son and heir of sir John Knyvet, late of Ashwellthorp in Norfolk, knight of the Bath, deceased; sir John Rous of Henham in Suffolk, bar. Thomas Glemham of Glemham in Suffolk, esq; Daniel Bedingfield of Grays-Inn in Middlesex, esq; and James Calthorp of Barsham in Norfolk, esq; of the second part; Charles L'Estrange of Darsham in Suffolk, gent. and William Betts of Yoxford in Suffolk, gent of the third part; and dame Mary Knyvet of Darsham aforesaid widdow of the fourth part, witnesseth, That Thomas Knyvet conveys all his manors of Ashwellthorp, Wreningham, Hapton and Fundenhall, the advowsons of Ashwellthorp and Wreningham, capital messuage called Thorphall, gardens, orchards, park, padock lands, tenements and hereditaments in Ashwellthorp, and many other towns in Norfolk, and the revertions which descended or came to him after his father's death to Charles L'Strange and William Betts and their heirs to the use of Thomas for life, and afterward to the said Charles L'Strange and William Betts to preserve contingent uses, then to sir John Rous and others for 500 years, then to his first and other sons in tail male; and in default of such issue, to the use of John Knyvet of Brakendale near Norwich, esq; for life, &c. then to Paston Knyvet, eldest son of the said John in tail male, the like limitations to Thomas Knyvet, second son of John Knyvet aforesaid; the like to John Knyvet, third son of John, to Charles Knyvet his fourth son, and in default of such issue, to Thomas Glemham, son of Thomas Glemham the trustee, (who married Elizabeth eldest sister of Thomas Knyvet, who settled the estate) for life, &c. and after in tail male, &c. and for default of such issue, to the right heirs of the said Thomas Knyvet, with a declaration that the term of 500 years is limited in trust, that the said trustees shall permit the rents, &c. to be taken by such persons, and for such time, as the said Thomas should appoint by his will: and by mortgage or sale to raise money to pay his debts and legacies, and if the next in revertion pay the same, then the term to cease, &c. with a clause of revocation, &c.

John Knyvet of Brakendale, son of Thomas, younger son of sir John his father.

23 Sept. 1693. Tho. Knyvet's will. F 5

In the name of God Amen. I Thomas Knyvet, of Darshamhall in Darsham in Suffolk, esq; doe make my last will and testament this 23d of September, 1693. &c. My body to be buried at Ashwellthorp, as neer my father as may be, reciting the deed of release just before mentioned; wherein he settled

his real eſtate, confirms the ſame and his mother's joynture, &c. She to receive the rents of his eſtate not ſettled on her in joynture to pay his debts, and his ſiſters portions given by his father's will and legacies now given, &c. and if MARY and JANE his ſiſters marry, then the truſtees to raiſe their portions. I deviſe to my three ſiſters, CATHERINE HARRIS, widdow (now Mrs. BOKENHAM) MARY KNYVET (who dyed unmarried) and JANE KNYVET (afterwards married to OLIVER LE NEVE of Great Wychingham in Norfolk, eſq; and dyed without iſſue) one thouſand pounds each, to be paid within one year after my deceaſe. To my grandmother the lady ELIZABETH BEDINGFIELD, fifty guineas. To my honoured kinſwoman the lady ANNE ROUS, ten guineas. To my truſtees ſir JOHN ROUS, &c. one hundred guineas, equally to be divided; all my other perſonal eſtate I give to my dear mother whom I make executrix, &c. Ex autog.

She refuſed adminiſtration, and adminiſtration was granted to his ſiſter Mrs. HARRIS.

In the chappel on the north-ſide of the chancel of Aſhwellthorp church, on a black marble-ſtone, whereon the arms and creſt of the family are cut, and under them this inſcription.

Hic Situs eſt
THOMAS KNYVET Armiger.
JOHANNIS de Balneo Equitis
Filius natu Maximus. G 5
Qui Nobilem à quâ oriundus eſt Stirpem
Non minus generoſâ indole, Fide antiquâ,
Spectatâ omnibus humanitate,
Quam ingenii acumine, acri Judicio,
Et exquiſita politiorum Literarum Scientiâ,
Expreſſit, illuſtravit.
Spem vero quam Boni omnes
De illo conceperant ampliſſimam,
Præcox Fatum eripuit:
Diuturni enim morbi dolore fractus,
Vigente adhuc Ætate,
Cælebs animam Deo reddidit
4to Kalend. Octobris 1693.
Ætatis Suæ 37.

THOMAS KNYVET, eſq; was buried September the 30th 1693. *Ex regiſtro eccleſie parochialis Aſhwellthorp.*

JOHN KNYVET, ſecond ſon of ſir JOHN, mentioned in ſir JOHN's will, was a captain in Ireland, and dyed there unmarried as appears by the letters following, and the ſeveral affidavits and living witneſſes.

SIR, Lisburn in Ireland, the 20th of February, 1689,

YOUR brother captain JOHN KNYVET dyed of a conſumption, on Saturday the 15th inſtant, and was decently interred in the church of Lisburn the Monday following: he made his will about eight days before he departed, I ſend it here incloſed to you by his man RICHARD SEARLE, &c. H 5

H. SCARDEVILLE.

For THOMAS KNYVET, eſq; at the lady BEDINGFIELD, her houſe at Darſham, near Yoxford in Suffolk. Theſe.

An account of the charges at captain JOHN KNYVET's funerall, and other charges, &c.

Imprimis. For wine 1 *l.* 5 *s.* For the miniſter's fees and the breaking the ground in the church 1 *l.* 19 *s.* For gloves 2 *l.* 14 *s.* &c. Paid two guineas given by legacy to the poor of Lisburn 2 *l.* 6 *s.* 15

H. SCARDEVILLE.

ELIZABETH, eldeſt daughter of ſir JOHN, dyed before her brother THOMAS.

ELIZABETH eldeſt daughter of ſir JOHN KNYVET, knight of the Bath, married THOMAS GLEMHAM of Little Glemham in Suffolk, eſq; ſhe dyed and was buried at Little Glemham, and left one child THOMAS GLEMHAM, eſq; who died unmarried at Valladolid in Spain about the year 1711. all which is proved by the affidavits and living witneſſes, and the proofs in writing following.

K 5 Hillary term, 1704. The ſeveral anſwers of THOMAS GLEMHAM, eſq; (an infant under the age of 21 years by dame MARY KNYVET widdow, his grandmother and guardian) to the bill of complaint of RICHARD HARRIS, gent.

THOMAS GLEMHAM, eſq; ſon and heir of THOMAS GLEMHAM, eſq; and ELIZ. his wife, eldeſt daughter of ſir JOHN KNYVET. This defendant, &c. ſaving advantages, &c. anſwereth and ſaith, That he is the only ſon and heir of THOMAS GLEMHAM, eſq; and ELIZABETH his wife deceaſed, who was the eldeſt daughter of ſir JOHN KNYVET, knight of the Bath deceaſed, who was grandfather to this defendant; and as ſuch is one of the coheirs of THOMAS KNYVET, eſq; deceaſed, who was eldeſt ſon of the ſaid ſir JOHN KNYVET, unkle to this defendant, and claims a fourth part of ſuch of the ſaid THOMAS KNYVET's eſtate, as deſcended to his coheirs after his death. But this defendant ſaith, That the ſaid THOMAS KNYVET did in his life-time make a ſettlement of his eſtate by indentures of leaſe and releaſe, the laſt dated the 23 of September, 1693. (as before recited.) And this defendant ſaith and believeth, that the ſaid THOMAS KNYVET never paid the 1000 *l.* to the ſaid ELIZABETH this defendant's mother, but that the ſame by agreement between the ſaid THOMAS KNYVET and JOHN HARRIS the other defendant CATHERINE's former husband, was paid by him the ſaid JOHN HARRIS to this defendant's late father THOMAS GLEMHAM, after his marriage with the ſaid ELIZABETH the defendant's mother, and the eſtate charged therewith, as in the agreement made upon the marriage of the ſaid JOHN HARRIS with the ſaid CATHERINE KNYVET, &c.

L 5 E 5 JOHN HARRIS the firſt huſband of CATHERINE KNYVET. From a copy of the anſwer in Chancery. 25 March 1710.

Mr. THOMAS GLEMHAM's will. M 5 Regiſtr. YOUNG, 258. From a copy out of the prerogative court. In the name of God, &c. I THOMAS GLEMHAM, eſq; of Glemham, in the county of Suffolk, and captain in her Majeſty's regiment of dragoons, commanded by the honourable brigadier PEPPER, do make and ordain my laſt will and teſtament in manner following. *Imprimis*, I give and deviſe unto JOHN BENCE of Heveningham in the county of Suffolk, eſq; his heirs and aſſignes, all my mannors, meſſuages, lands, tenements and hereditaments, &c. in Norfolk and elſewhere, &c. *Item*, All the reſt and reſidue of all and ſingular my eſtate real and perſonall, &c. (my debts and funeral expences firſt paid) I give to the ſaid JOHN BENCE, whom I make ſole executor of my laſt will, &c. In witneſs whereof, I have hereunto ſet my hand and ſeal the 25th day of March 1710.

THO. GLEMHAM.

Proved at London by the oath of JOHN BENCE executor, the 13th of December, 1711.

CATHERINE ſecond daughter of ſir JOHN KNYVET, knight of the Bath, formerly the wife of JOHN HARRIS, gent. now 1717, the wife of RICHARD BOKENHAM of Weſton-Mercate, in the county of Suffolk, eſq; is the now claimant of the barony of Berners.

MARY KNYVET her will. N 5 Sir JOHN KNYVET her father. THOMAS KNYVET, brother. Dame MARY KNYVET mother. MARY KNYVET, third daughter of ſir JOHN KNYVET, knight of the Bath, and ſiſter and coheir of THOMAS, dyed without iſſue; proved by Mrs. BOKENHAM's, and Mrs. SMITH's affidavits, by living witneſſes, Mr. GODFREY, Mr. BETTS, and her will as follows.

IN the name of God, Amen. I MARY KNYVET of Darſham, in the county of Suff. ſpinſter, being ſick in body, &c. do make my laſt will and teſtament in manner following, &c. I deſire my body to be buried at Aſhwellthorp, &c.

2

&c. *Imprimis*, I give all the eſtate in lands and tenements that I have right to by the laſt will of my late father ſir JOHN KNYVET, knight of the Bath, deceaſed, or by the ſettlement of THOMAS KNYVET, eſq; my late brother, deceaſed, or by his will, and all my manners, lands, &c. whatſoever, unto my dear and honoured mother dame MARY KNYVET, widdow, her heirs, executors and aſſignes, &c. Upon truſt, that ſhe ſhall maintain and educate my coſen LUCY KNYVET an infant, nntill ſhe ſhall be 21 years old, and then to pay her 1500 *l.* for her portion, if ſhe live to that age, &c. *Item*, I give to my cozen colonel JOHN KNYVET, forty pounds. To JOHN his ſon, my godſon, and cozen ELIZABETH his daughter, twenty pounds each. To my cozen ANNE SPARHAM, fifty pounds. To my cozen MARGARET LONDON, KATHARINE GIRLIN, CHRISTIAN LONDON, and GENEVEVA SMITH, twenty pounds each; To my brothers (in law) RICHARD BOKENHAM, eſq; and OLIVER LE NEVE, eſq; and to my nephew THOMAS GLEMHAM, eſq; 20 *l.* each; To the poor of Darſham 5 *l.* And all other my perſonal eſtate whatſoever, I give to my dear ſiſter KATHARINE BOKENHAM, and make her executrix, &c. Dated 26 day of October, A. D. 1709 *.

LUCY KNYVET, col. JOHN KNYVET, JOHN his ſon, ELIZ. his daughter, ANNE SPARHAM, MARGARET LONDON; KATHERINE GIRLING; CHRISTIAN LONDON, GENEVEVA SMITH, RICHARD BOKENHAM, OLIVER LE NEVE, her brother's in law, nephew THOMAS GLEMHAM, ſiſter KATHERINE BOKENHAM.

O 5

* Note, It is on the grave-ſtone 1710, but being laid down ſome time after; the year was miſtaken, as appears by her will and the pariſh regiſter.

P 5

In the chapel of the aforeſaid church of Aſhwellthorp, in Norfolk, on a black marble grave-ſtone, with the arms of the family of KNYVET in a lozenge.

Here lyeth the Body of Mrs. MARY KNYVET, the third Daughter of Sir JOHN KNYVET, Knight of the Bath. Departed this Life the 29th of October. 1710. being of the Age of 47 Years.

Extracted out of the regiſter of the pariſh of Aſhwellthorp in Norff. aforeſaid, and examined therewith.

Mrs. MARY KNYVET, buried November 3, 1709.

JANE fourth daughter, proved by affidavits and living witneſſes.

JANE the 4th daughter of ſir JOHN KNYVET, mentioned in the will of ſir JOHN her father, to whom he gave a 1000 *l.* portion; and in the will of THOMAS KNYVET her brother, to whom he gave a 1000 *l.* more, ſhe was married to OLIVER LE NEVE of Great Wichingham in Norfolk, eſq; and dying without any iſſue, was buried under a black marble-ſtone, in the chancell of great Wichingham church aforeſaid, with the following inſcription thereon.

M. S.

MOrtalibus Exuvlis hic depoſitis,
Dormit, beatam præſtolans Anaſtaſin,
(Cum Surgite noviſſimum reſonabitur)
Fœmina è pluribus lectiſſima,
JANA,
JOHANNIS KNYVET, Equitis de Balneo
Filia.
Natu præter unam minima;
Virtutibus tamen magna,
OLIVERI LE NEVE Armigeri
Uxor altera,
Sed nulli ſecunda,
Utpote, quæ viro, ſuiſque Omnibus
Non unquam erat, niſi moriendo gravis.
Obiit 19 Junij.
Anno ſalutis noſtræ, 1704, *&c.*

Extracted out of the pariſh-regiſter.

JANE the wife of OLIVER LE NEVE, eſq; was buried June the 22d. A. D. 1704.

THOMAS

Administration to JANE KNYVET granted her husband OLIVER LE NEVE.

THOMAS TANNER ſacræ theologiæ profeſſor curiæ conſiſtis Epiſcopalis Norwic' Officialis, &c. dilecto, &c. OLIVERO LE NEVE marito legitimo JANE LE NEVE (nuper KNYVETT) nuper dum vixit de Wichingham magna in com. Norff. &c. defunct. ſalutem, &c. cum præfata JANA LE NEVE (nuper KNYVET) abinteſtat. nuper deceſſerit, &c. Ad adminiſtrandum tibi præfato OLIVERO, &c. comittimus, &c. Dat. nono die menſis Septembris A. D. 1710.

Q 5

JOHN MOOR, reg. princ.

MURIELL, fifth daughter.

R 5 MURIELL 5th daughter of ſir JOHN KNYVET, knight of the Bath, dyed before her brother THOMAS KNYVET, eſq; unmarried, ſo ſhe is not mentioned in his ſettlement and will, her death without iſſue, proved by affidavits of Mrs. BOKENHAM, and Mrs. SMITH, and living witneſſes, and by the inſcription on her grave ſtone in the chappel in the church of Aſhwellthorp.

Here lyeth what was Mortal of
MURIELL the youngeſt daughter of
Sir JOHN KNYVET, knight of the Bath, and dame MARY his wife, ſhe dyed Sept. 8. 1688.

THOMAS KNYVET of Mutford in Suff. ſecond ſon of THOMAS KNYVET, eſq; and KATHERINE Burgh.

Reg. of Aſhwellthorp. THOMAS ſon of THOMAS KNYVET, eſq; was baptized Feb. 22. 1624.

13 Sept. 1652. S 5 This indenture made between THOMAS KNYVET of Aſhwellthorp in Norff. eſq; the elder, &c. THOMAS KNYVET, gent. one of the ſons of the ſaid THOMAS KNYVET and EMME his wife, of the ſecond part, and JOHN KENDALL of Lynford, &c. in the county aforeſaid, of the third part; in conſideration of a marriage already had betwixt THOMAS and EMME. Whereby THOMAS KNYVET the elder, ſettles his farm in Wymundham in Norff. called Blackhall farm, and lands on his ſaid ſon THOMAS KNYVET the younger, and EMME HAWARD for her joynture, and on the heirs of THOMAS on the body of EMME, with remainders, &c. with a priviſo that if THOMAS KNYVET, the elder, or his heirs pay 1000 *l.* in one ſum within ſeven years, the conveyance to be void, &c.

Ex autog. T 5 Know all men, &c. That I THOMAS KNYVET of Mudford in Suff. gent. doe owe unto WILLIAM HOOKER citizen and grocer of London, the ſum of twenty pounds, &c. In witneſs whereof I have hereunto put my hand and ſeal this 29 day of May, 1656.

1 April 1658. The will of EMME KNYVET, wife of THOMAS aforeſaid. In the name of God, Amen. The firſt day of April, in the year 1658. I EMME KNYVET of Henham in the county of Suffolk widdow, do make and ordain this my laſt will and teſtament in manner following, &c. Firſt I commend my ſoul, &c. my body to be interred, &c. by the diſcretion of my dear brother in law JOHN KNYVET of Darſham in Suff. eſq; whom I make ſole executor, &c. *Item*, I will that my ſaid brother in law JOHN KNYVET, ſhall have the education of my ſon JOHN according to his quality, till his age of 21 years, and my ſaid brother to receive the rents, iſſues and profits of all my manors, lands, &c. (being in feoffees hands in truſt for me and my heirs) without giving any other account than the education of my ſaid ſon. *Item*, Whereas I did receive 1000 *l.* of my father in law THOMAS KNYVET, eſq; for the capital meſſuage called Blackhall in Wymundham in Norfolk, and lands thereto belonging, &c. the greateſt part of which money I have diſburſed for the payment of my late husband's debts. *Item*, I give to my ſaid ſon JOHN all my plate, ready money, books. To THOMAS KNYVET my father-in-law my gold ring. To my brother-in-law JOHN ROUS, eſq; my gold ring. To my dear ſiſter Rous his wife

JOHN KNYVET brother in law.

U 5 THOMAS KNYVET, father in law.

JOHN ROUS, and wife, brother and ſiſter in law.

SISTER KNYVET, wife of JOHN, ſiſter LEGARD, neice,

wife my knot of diamonds, &c. To my ſaid brother-in-law JOHN KNYVET my watch, &c. To my ſiſter his wife my ring. To my ſiſter LEGARD my clock. To my neices KATHERINE ROUS and BETTY ROUS, to my cozen ROBERT LONDON and his wife, to my cozen HUMFRY BOHUN and his wife, and to Mr. PAUL GOSNOLD and others legacies; all the reſt of my goods, chattells, debts, &c. I give to my ſaid brother-in-law JOHN KNYVET and my ſiſter ROUS, equally to be divided after debts and funerall paid; in witneſs, &c. KATHERINE ROUS, ELIZ. ROUS, Cozen ROBERT LONDON, HUMFRY BOHUN, &c.

EMME KNYVETT.

Item, I give to Mr. JOHN KENDALL ten pounds, &c.

This will was proved at London before the judges for probates of wills, &c. the 10th day of May 1658. by the oath of JOHN KNYVETT, eſq; executor, &c. Reg. WORTON in cur. perog. Cant. f. 346.

Journal of the houſe of lords.

Die Martis, 19 *die Martij*, 1694.

The heraulds being this day heard at the bar, purſuant to an order of the 16th inſtant, in relation to deſcents of baronies by writ; and debate thereupon, &c. This queſtion was put, whether if a perſon ſummoned to parliament by writ, and ſitting die, leaving iſſue two or more daughters who all die, one of them only leaving iſſue ſuch iſſue has a right to demand a ſummons to parliament?

It was reſolved in the affirmative, &c.

The Pedigree of CATHERINE KNYVET, wife of RICHARD BOKENHAM of Weston-Mercate in the county Suffolk, esq; and lineal heir to sir John BOURCHIER, knight of the garter, first lord Berners.

Dugdale's Baronage, Vol. II. p. 132. b.

Sir JOHN BOURCHIER, Knight of the Garter, 4th Son of William Earl of Ewe, by the Lady Ann Plantaginet his Wife, Daughter of Thomas of Woodstock, Duke of Glocester, 6th Son of King Edward III. and Sister and sole Heir of Humphrey E. of Buckingham her Brother; was summon'd to Parliament by the Title of John Bourchier de Berners, Chr. by Writ dated 26 *Maij*, *Anno* 33 Henr. VI. as also in 38 Hen. VI. and in 1, 2, 6, 9, and 12 of Edw. IV. He made his Will, dated 21 March, *Ann.* 1473. 14 Edw. IV. and died 10 May 1474 buried in Chertsey-Abbey in Surrey.
Proofs Number A, B, C, D, E, F, G, H. I, K.

MARGERY, Daughter and sole Heir of Sir Richard Berners, Knight, commonly call'd Lord Berners, Relict of John Ferrers, Esq; who died without Issue; she survi'v'd her second Husband John Lord Berners, and died *Anno* 23 Edward IV.
Proofs of Her, see Letters L, M, N.

Dugd. Baronage, Vol. II. p. 186.
Philpot's Stemmata, T. N. 21. fol. 81. a.
Vincent's Baronage, p. 214.

Weaver's Funeral Monuments, p. 482.
Sandf. Geneal. History, p. 235.
Monumenta Westmonast. p. 49.

Sir Humphrey Bourchier, Knight, eldest Son of John Ld Berners was slain at Barnet-Field, on the Part of King Edward IV. upon Easter-Day, 1471. *Anno* 11 Edw. IV. in the Life-time of his Father; and was buried in St. Edmund's Chapel in the Abbey of Westminster.
Proofs N, O, P, Q, R, S, T.

Elizabeth, Daughter and sole Heir of Frederick Tylney of Boston in Com. Lincoln, Esq; she survi'v'd her Husband, and afterwards married Thomas Howard Earl of Surry and Duke of Norfolk, and made her Will, dated 6 Nov. 1506. *Anno* 22 Hen. VII.
Proofs P, Q, R, S, T, V.

Vincent's Baronage, Vol. II. p. 267.
Philp. Stemmata, T. N. 11. p. 87.
Vincent's Yorkshire, N. 110. fol. 39.

Elizabeth Bakyn Concubine of Jo. Lord Berners.

Sir John Bourchier, Knt. Son and Heir of Sir Humphrey, and Grandson and Heir of John Lord Berners, was summon'd to Parliament, as Lord Berners, in 11 and 12 of Hen. VII. and in 1, 3, 6, and 21 Hen. VIII. and died Deputy of the Town and Marches of Calais, 19 *Martii*, *Anno* 1533. 23 Hen. VIII.
Proofs W, X, Y, Z, Aa, Bb, Cc, Dd, Hh.

Catharine Daughter of John Howard Duke of Norfolk; she survived her Husband, and died the 12th of March, *Ann.* 27 Hen. VIII.
Proofs Ee, Gg, Hh.

Vincent's Yorkshire, p. 208, 305.
Vincent's Baronage, p. 214.
Vincent's Yorkshire, p. 39.
Philpot's Kent, Sussex, Surry, &c. No. p. 159. b.

1. Urith, Natural Da. of John Lord Berners by Eliz. Bakyn his Concubine, was married to Sir Wm. Sherrington, Kt. they both died without Issue.	3. George Bourchier, 3d Natural Son of John Lord Berners.	2. Humph. Bourchier, 2d Natural Son of John Lord Berners.	1. James Bourchier, eldest Nat. Son of John Ld Berners by Eliz. Bakyn, was a Man of Arms in Calais, from whom the Bourchiers of Benningborough, in Yorkshire are descended.

NOTE, All the Four Children mentioned in their Father's Will, Proof mark'd Dd; and call'd Bastards in the Proof mark'd Ll.
Books in the Library of the College of Arms to prove them Illegitimate. 2 D. V. fol. 51. Cert. Book, I. 5. fol. 162. B.

Edmund Knyvet, Esq; Serjeant-Porter to King Hen. VIII. was of Ashwelthorp, in Com. Norf. *jure uxoris*; he was 2d Son of Edm. Knyvet of Bokenham-Castle, in Norf. Esq; and died 1 *Maij*, *Ann.* 31 Hen. VIII. buried at Ashwelthorp.
Proofs Mm, Nn, Oo, Xx, Yy, Zz.
Vincent's Norf. p. 364. & 366.

Jane, Daughter and Coheir, and afterwards (by the Death of her Sister, Mary Unton without Issue) sole heir of John Lord Berners; she survi'v'd her Husband, and died 17 Febr. 1561. buried at Ashwelthorp.
Proofs Mm, Nn, Tt, Vv, Ww, Yy, Zz.
Vid. Weever's Funeral Monuments, p. 815.

Mary Bourchier, Daughter and Coheir of John Lord Berners, was married to Alex. Unton, Esq; eldest Son of Sir Tho. Unton, of the County of Berks, Knight, to whom she was first Wife; and died without Issue.

John Knyvet, of Plumsted in Norfolk, Esq; eldest Son of Edm. Knyvet, Esq; and Jane Bourchier his Wife, was 22 Years old at his Father's Death, and died in his Mother's Life-time. He married
Proofs Pp, Qq, Rr, Tt, Yy, Zz, Aaa.

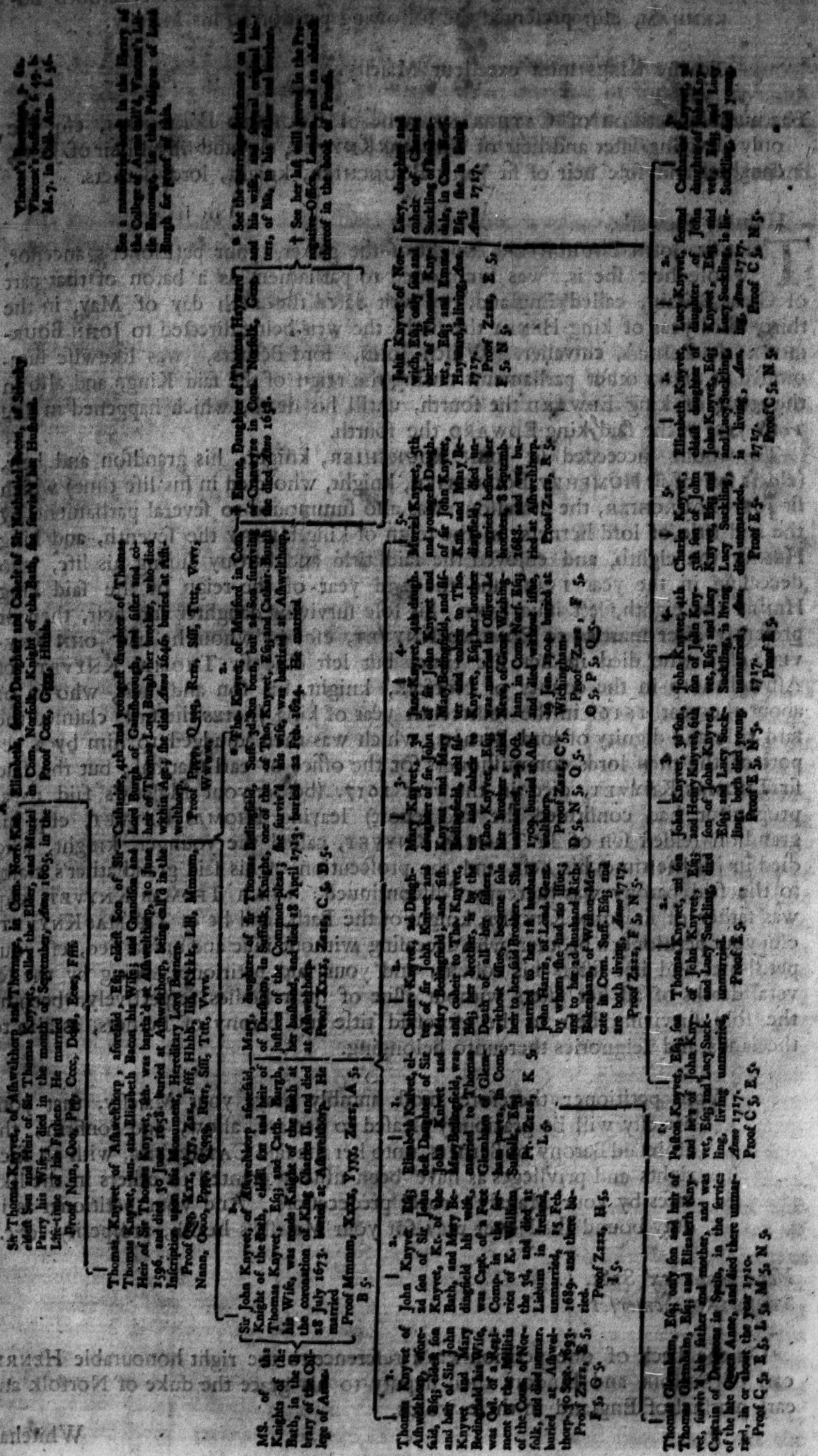
Agnes, Daughter of Sir John Harcourt of Stanton Harcourt, Oxon, and Elizabeth Staff. Knight; she survi'v'd her Husband, and re-married with Wm. Bowyer, Gent. of Wimbleton, in Com. Surrey.
Proofs Pp, Qq, Rr, Ss, Yy, Zz, Aaa, Bbb, Ccc, Ddd.

Manuscript-Book of Knights, in Coll. Arm.

Sir Thomas Knyvet, of Ashwelthorp in Com. Norfolk, Knt. eldest Son and Heir of John Knyvet, Esq; and Agnes Harcourt succeeded Jane Bourchier, his Grandmother, in the Lands of her Inheritance; and in the Year 1616. having petition'd the King for the Barony of Berners, descended to him from the said Jane his grandmother, he obtained a certificate upon a reference of his petition by King James I. to the Lords-Commissioners for the Office of Earl-Marshal, of his right and title to the said Barony; but died the 9th of Febr. following, before he could obtain the King's Confirmation thereof; buried at Ashwelthorp. He married
Proofs Xx, Bbb, Ccc, Ddd, Eee, Fff, Ggg, Hhh, Iii, Lll, Mmm, Nnn, Ooo, Ppp, Qqq, Rrr, Sss, Ttt, Vvv, Xxx, Yyy, Zzz.

Muriel, Daughter of Sir Thomas Parry, Knight, Master of the Court of Wards and Liveries, and Treasurer of the Houshold to Queen Elizabeth, and Sister and Coheir of Sir Thomas Parry of Welford in Com. Berks, Knight, Chancellor of the Duchy of Lancaster, and Ambassador-Leidger in France, temp. Eliz. Reg. she died 25 April 1616. buried at Ashwelthorp.
Proofs Xxx, Yyy, Zzz, Bbbb.

Vincent's Norfolk, pag. 356.
Abstract of Claims, Baglon.



The latter end of the year 1717. the ſaid KATHERINE, wife of RICHARD BOKENHAM, eſq; preſented the following petition to his Majeſty.

To the Kings moſt excellent Majeſty.

E. COLL. S. STABBING. Somerſet.

The humble Petition of CATHERINE, wife of RICHARD BOKENHAM, eſq; the only ſurviving ſiſter and heir of THOMAS KNYVET, eſq; and lineal heir of JANE, daughter and ſole heir of ſir JOHN BOURCHIER, knight, lord Berners.

Humbly ſheweth,

THat ſir JOHN BOURCHIER, knight of the garter, your petitioner's anceſtor, whoſe heir ſhe is, was ſummoned to parliament as a baron of that part of Great Britain, called England, by writ dated the 26th day of May, in the thirty third year of king HENRY the ſixth, the writ being directed to JOHN BOURCHIER de Berners, chivalier. Which JOHN, lord Berners, was likewiſe ſummoned to divers other parliaments during the reign of the ſaid King, and alſo in the reign of king EDWARD the fourth, untill his death, which happened in the 14th year of the ſaid king EDWARD the fourth.

To whom ſucceeded ſir JOHN BOURCHIER, knight, his grandſon and heir, (eldeſt ſon of ſir HUMPHRY BOURCHIER, knight, who died in his life time) which ſir JOHN BOURCHIER, the grandſon, was alſo ſummoned to ſeveral parliaments by the ſaid title of lord Berners, in the reign of king HENRY the ſeventh, and king HENRY the eighth, and enjoyed the ſaid title and barony during his life, who deceaſing in the year 1532, and the 23d year of the reign of the ſaid king HENRY the eighth, left iſſue JANE, his ſole ſurviving daughter and heir, then or preſently after married to EDMUND KNYVET, eſq; by whom he had JOHN KNYVET, eſq; who died in her life time, but left iſſue ſir THOMAS KNYVET, of Aſhwellthorp in the county of Norfolk, knight, his ſon and heir, who in or about the year 1616. in the fourteenth year of king JAMES the firſt, claimed the ſaid title and dignity of lord Berners, which was then adjudged to him by a report of the then lords commiſſioners for the office of earl marſhal; but the ſaid ſir THOMAS KNYVET, died in the year 1617. (before your Majeſty's ſaid royal progenitor had confirmed the ſaid report) leaving THOMAS KNYVET, eſq; his grandſon (eldeſt ſon of ſir THOMAS KNYVET, called the younger, knight, who died in his life time) his heir, and the proſecution of his ſaid grandfather's claim to the ſaid barony was thereupon diſcontinued; which THOMAS KNYVET, eſq; was father of ſir JOHN KNYVET, knight of the Bath, and he of THOMAS KNYVET, eſq; your petitioner's brother, who deceaſing without iſſue and unmarried, left your petitioner and her ſiſters his coheirs, and your ſaid petitioner, being by the ſeveral deaths of all her ſiſters without iſſue of their bodies reſpectively, become the ſole ſurviving heir to the aforeſaid title and barony of Berners, as alſo to the lands and ſeignories thereunto belonging.

Your petitioner therefore moſt humbly prays your Majeſty, that your Majeſty will be graciouſly pleaſed to declare, allow, and confirm, the aforeſaid Barony of Berners, unto her the ſaid CATHERINE, with all ſuch rights and privileges as have been uſually granted to others in the like caſes by your Majeſty's royal predeceſſors. And your petitioner as in duty bound ſhall ever pray for your Majeſty's health, proſperity, *&c.*

Vera copia ex' SAM. STEBBING, *Somerſet.*

On the back of one petition was a reference to the right honourable HENRY, earl of Suffolk and Bindon, then deputy to his grace the duke of Norfolk and earl marſhal of England in theſe words,

Whitehall 3d of March, 1717-18.

His Majeſty is graciouſly pleaſed to refer this petition to the right honourable the earl of Suffolk and Bindon, depury earl marſhal of England, to conſider thereof, and report his lordſhip's opinion what may be fitly done therein; whereupon his Majeſty will declare his further pleaſure.

Sunderland.

On the back of a copy of the ſame petition was another reference to ſir EDWARD NORTHEY, knight, his Majeſty's attorney general, in theſe words,

Whitehall 3d of March, 1717-18.

His Majeſty is graciouſly pleaſed to refer this petition to ſir EDWARD NORTHEY, knight, his Majeſty's attorney general, to conſider thereof, and report his opinion what may be fitly done therein; whereupon his Majeſty will declare his further pleaſure.

Sunderland.

Vera copia ex'
S. S. Somerſet.

To the King's moſt excellent Majeſty.

May it pleaſe your Majeſty,

In humble obedience to your Majeſty's commands, ſignified to me by the earl of Sunderland, I have conſidered of the annext petition of KATHERINE, wife of RICHARD BOKENHAM, eſq; the only ſurviving ſiſter and heir of THOMAS KNYVET, eſq; and lineal heir of JANE, daughter and ſole heir of ſir JOHN BOURCHIER, knight, lord Berners, whereby ſhe repreſents to your Majeſty, that ſir JOHN BOURCHIER, knight of the garter, your petitioner's anceſtor whoſe heir ſhe is, was ſummoned to parliament as a baron of that part of Great Britain, called England, by writ dated the 26th day of May in the 33d year of king HENRY the VIth, the writ being directed JOHN BOURCHIER de Berners, chivalier, which JOHN, lord Berners, was likewiſe ſummoned to divers other parliaments during the reign of the ſaid King, and alſo in the reign of king EDWARD the IVth, which happened in the fourteenth year of the ſaid king EDWARD the IVth, to whom ſucceeded ſir JOHN BOURCHIER, knight, his grandſon and heir (*viz.* ſon of ſir HUMPHRY BOURCHIER, knight, who died in his life time) which ſir JOHN BOURCHIER, the grandſon, was alſo ſummoned to ſeveral parliaments by the ſaid title of lord Berners, in the reigns of king HENRY the VIIth and king HENRY the VIIIth, and enjoyed the ſaid title and barony during his life, who deceaſing in the year 1532. and the 23d year of the reign of the ſaid king HENRY the VIIIth, left iſſue JANE, his ſole ſurviving daughter and heir, then or preſently after married to EDMUND KNYVET, eſq; by whom ſhe had JOHN KNYVET, eſq, who died in her life-time, but left iſſue ſir THOMAS KNYVET of Aſhwellthorp in the county of Norfolk, knight, his ſon and heir, who in or about the year 1616. in the 14th year of king JAMES the firſt, claimed the ſaid title and dignity of lord Berners, which was then adjudged to him by the report of the then lords commiſſioners for the office of earl marſhal, but the ſaid ſir THOMAS KNYVET died in the year 1617. (before your Majeſty's ſaid royal progenitor had confirmed the ſaid report) leaving THOMAS KNYVET, eſq; his grandſon (*viz.* ſon of ſir THOMAS KNYVET, called the younger, knight, who died in his life-time) his heir, and the proſecution of his ſaid grandfather's claim to the ſaid barony was thereupon diſcontinued; which THOMAS KNYVET, eſq; was father of ſir JOHN KNYVET, knight of the Bath, and he of THOMAS KNYVET, eſq; the petitioner's brother; who deceaſing without iſſue and unmarried, left the

petitioner and her ſiſters his coheirs, and the ſaid petitioner being by the ſeveral deaths of all her ſiſters without iſſue of their bodies reſpectively, become the ſole ſurviving heir to the aforeſaid title and barony of Berners, as alſo to the lands and ſeigniories thereunto belonging, the petitioner therefore humbly prays your Majeſty will be graciouſly pleaſed to declare, allow and confirm the aforeſaid barony of Berners unto her the ſaid CATHERINE, in fee, with all ſuch rights and privileges as have been uſually granted to others in the like caſes by your Majeſty's royal predeceſſors.

And I do moſt humbly certify your Majeſty that the petitioner hath produced to me copies of ſeveral writs of ſummons as mentioned in the petition, and a certificate that there is not on the patent roll any patent for creating ſir JOHN BOURCHIER a baron, whereby ſir JOHN being called only by writ, took an eſtate in fee in his honour, and evidence of the ſeveral deſcents and deaths mentioned, by which it appears that the petitioner is ſole ſurviving heir of the firſt lord Berners; but of what eſtate the petitioner is ſeiſed hath not appeared to me. And I am humbly of opinion that it is in your Majeſty's power to make ſuch declaration as is deſired by the petition; but in regard the proſecution of the claim of this honour hath been diſcontinued for 100 years, and the honour hath been ſome time ſuſpended, while ſeveral daughters were coheirs, which are now reduced to one, and that to eſtabliſh ſo long a pedigree requires great and nice proof, and of late years your Majeſty's predeceſſors have uſually referred a petition claiming a peerage to the houſe of peers, to be examined by them, and they to certify thereon.

I moſt humbly ſubmit it to your Majeſty, whether if your Majeſty ſhall think fit to gratify the petitioner, your Majeſty will not firſt refer the petition to the houſe of peers, to be conſidered by them, who will examine the pedigree and title on oath.

All which is moſt humbly ſubmitted
to your Majeſty's royal wiſdom.

Vera copia ex' S. S. Somerſet.

March 12. 1717-18. EDWARD NORTHEY.

11 *March* 1719.

The earl of Sunderland, by his Majeſty's command, preſented to the houſe a petition of CATHERINE, wife of RICHARD BOKENHAM, eſq; with his Majeſty's reference thereupon, which was read, and is as follows, *viz.*

To the King's moſt excellent Majeſty.

The humble petition of CATHERINE, wife of RICHARD BOKENHAM, eſq; the only ſurviving ſiſter and heir of THOMAS KNYVET, eſq; and lineal heir of JANE, daughter and ſole heir of Sir JOHN BOURCHIER, knight, lord Berners.

Humbly ſheweth,

That ſir JOHN BOURCHIER, knight of the garter, your petitioner's anceſtor, whoſe heir ſhe is, was ſummoned to parliament as a baron of that part of Great Britain, called England, by writ dated the 26 day of May in the 33d year of king HENRY the VIth, the writ being directed JOHN BOURCHIER de Berners, chevalier, which JOHN, lord Berners, was likewiſe ſummoned to diverſe other parliaments during the reign of the ſaid King, and alſo in the reign of king EDWARD the IVth untill his death, which happened in the 14th year of the ſaid king EDWARD the IVth.

To whom ſucceeded ſir JOHN BOURCHIER, knight, his grandſon and heir (*viz.*) ſon of ſir HUMFREY BOURCHIER, knight, who died in his life time, which ſir JOHN BOURCHIER, the grandſon, was alſo ſummoned to ſeveral parliaments by the

ſaid title of lord Berners in the reigns of king HENRY the VIIth and king HENRY the VIIIth, and enjoyed the ſaid title and barony during his life, who deceaſing in the year 1532, and the 23 year of the reign of the ſaid king HENRY VIII. left iſſue JANE, his ſole ſurviving daughter and heir, then or preſently after married to EDMUND KNYVET, eſq; by whom ſhe had JOHN KNYVET, eſq; who died in her life time, but left iſſue ſir THOMAS KNYVET of Aſhwellthorp in the county of Norfolk, knight, his ſon and heir, who in or about the year 1616, in the 14 year of king JAMES the firſt, claimed the ſaid title and dignity of lord Berners, which was then adjudged to him by a report of the then lords commiſſioners for the office of earl marſhal; but the ſaid ſir THOMAS KNYVET died in the year 1617, before your Majeſty's ſaid royal progenitor had confirmed the ſaid report, leaving THOMAS KNYVET, eſq; his grandſon, *viz.* ſon of ſir THOMAS KNYVET, called the younger, knight, who died in his life time, his heir, and the proſecution of his ſaid grandfather's claim to the ſaid barony was thereupon diſcontinued, which THOMAS KNYVET, eſq; was father of ſir JOHN KNYVET, knight of the Bath, and he of THOMAS KNYVET, eſq; your petitioner's brother, who deceaſing without iſſue and unmarried, left your ſaid petitioner and her ſiſters his coheirs and your ſaid petitioner being by the ſeveral deaths; of all her ſiſters without iſſue of their bodies reſpectively become the ſole ſurviving heir to the aforeſaid title and barony of Berners, as alſo to the lands and ſeigniories thereto belonging:

Your petitioner therefore moſt humbly prays your Majeſty, that your Majeſty will be graciouſly pleaſed to declare, allow and confirm the aboveſaid barony of Berners unto her the ſaid CATHERINE, in fee; with all ſuch rights and privileges as have been uſually granted to others in the like caſes by your Majeſty's royal predeceſſors, and your petitioner, as in duty bound, ſhall ever pray for your Majeſty's health, proſperity, &c.

Whitehall the 5th of March, 1719-20.

His Majeſty having been moved upon this petition, is graciouſly pleaſed to refer the ſame (together with the reports thereunto annexed) to the right honourable the houſe of peers, to examine the allegations thereof, as to what relates to the petitioner's title therein mentioned, and to inform his Majeſty how the ſame ſhall appear to their lordſhips.

Stanhope.

Upon reading the petition of CATHERINE, wife of RICHARD BOKENHAM, eſq; the only ſurviving ſiſter and heir of THOMAS KNYVET, eſq; and lineal heir of JANE daughter and ſole heir of ſir JOHN BOURCHIER, knight, lord Berners, preſented to his Majeſty, and by his Majeſty referred to this houſe, praying that his Majeſty will be graciouſly pleaſed to declare, allow and confirm the aforeſaid barony of Berners, unto her the ſaid CATHERINE, in fee, with all ſuch rights and privileges as have been uſually granted to others in the like caſes by his Majeſty's royal predeceſſors: It is ordered, by the lords ſpiritual and temporal in parliament aſſembled, that the ſaid petition, and his Majeſty's reference thereupon, together with the reports annexed thereunto, be referred to the committee of privileges, to conſider thereof, and report their opinion thereupon to the houſe, and to meet on Monday next.

The houſe being informed, That colonel THOMAS EARL was at the door, and deſired to prove his affidavit of the death of captain THOMAS GLEMHAM, in order to be made uſe of at the committee of privileges, to whom Mrs. BOKENHAM's petition ſtands referred; he was thereupon called in, and owned the ſame upon oath at the bar, and then withdrew. May 2. 1720.

Ordered, That the report from the lords committees for privileges, to whom the May 21. 1720.

the conſideration of the petition of CATHERINE, wife of RICHARD BOKEN-HAM, eſq; claiming the barony of Berners, was referred, be received on Wed-neſday next, and the lords to be ſummoned.

May 25. 1720. The order of the day for receiving the report from the lords committees for privileges, to whom the conſideration of the petition of CATHERINE, wife of RICHARD BOKENHAM, eſq; claiming the barony of Berners, was referred, being read, It is ordered, that the ſaid report be received on Monday next, and the lords to be ſummoned.

May 30. 1720. The earl of Clarendon (according to order) reported from the lords committees for privileges, to whom was referred the petition of CATHERINE, wife of RICHARD BOKENHAM, eſq; the only ſurviving ſiſter and heir of THOMAS KNYVET, eſq; and lineal heir of JANE, daughter and ſole heir of ſir JOHN BOURCHIER, knight, lord Berners, preſented to his Majeſty, and by his Majeſty referred to this houſe, praying that he will be graciouſly pleaſed to declare, allow and confirm, the barony of Berners, unto her the ſaid CATHERINE in fee, with all ſuch rights and privileges, as have been uſually granted to others in like caſes, by his Majeſty's royal predeceſſors. That the committee having directed the proper officers to attend with ſuch writs of ſummons, wills, records and books of the college of arms, as might be proper and neceſſary for making out the petitioner's claim; their lordſhips then ordered, that ſhe ſhould have liberty to be heard by counſel, and that notice ſhould be given to the attorney or ſolicitor general, or any other of the King's counſel, that they might be heard in his Majeſty's behalf; and counſel on both parts attending accordingly, proof was made by a perſon ſworn at the bar, that diligent and proper ſearch had been made ſo far back as the reign of king EDWARD the third, whether any patent had been granted for creating ſir JOHN BOURCHIER, knight of the garter, a baron, but that none could be found.

That there was produced to the committee and read, a writ of ſummons to parliament bearing date at Weſtminſter the 26 day of May in the 33d year of the reign of King HENRY the VIth, directed JOHANNI BOURCHIER de Berners, chevalier, was alſo produced and read, divers other writs of ſummons to ſeveral ſucceeding parliaments in the 38th and 49th years of the ſame reign, and in the 1ſt, 2d, 6th 9th and 12th years of the reign of king EDWARD IV. directed to the ſame perſon, and ſeveral other writs of ſummons in the 11th and 12th of king HENRY the VIIth, and the 1ſt, 3d, 6th and 21ſt of king HENRY VIII. directed to the grandſon and heir of the ſaid lord Berners, by the name and ſtile of JOHN BOURCHIER de Berners, chevalier, and the committee having inſpected the journal of this houſe in the reign of the ſaid king HENRY the VIIIth, found the name of the lord Berners entred therein, as preſent ſeveral days.

That there was beſides, produced to the committee the pedigree of the petitioner, as entred in the book of the college of arms, certified and atteſted in the uſual manner, and the ſame was inſpected.

That it appeared to their lordſhips, That the laſt lord Berners, who died in the reign of king HENRY the VIIIth, left a daughter named JANE, and that the ſaid JANE in a livery made to her after the death of her father, bearing date the 5th of July in the 25 of king HENRY VIII. and in ſeveral other records, and alſo in many deeds and writings, and in her will and epitaph was ſtiled daughter and heir, or daughter and ſole heir of the ſaid lord Berners, and that the ſaid JANE married EDMUND KNYVET, eſq; and had iſſue JOHN KNYVET, eſq; her eldeſt ſon, who died in her life time, left iſſue ſir THOMAS KNYVET of Aſhwellthorp in the county of Norff, knight, his ſon and heir, and grandſon and heir to the ſaid JANE, and that the ſaid ſir THOMAS KNYVET had iſſue ſir THOMAS KNYVET, the younger, his eldeſt ſon, who died in the life time of his father, leaving THOMAS KNYVETT, his ſon and heir, and grandſon and heir, to ſir THOMAS KNYVETT, the elder, and that the ſaid THOMAS KNYVETT, eſq; had iſſue JOHN, his eldeſt ſon, afterwards created knight of the Bath, who had iſſue two ſons and four daughters, beſides the petitioner, *viz.* THOMAS and JOHN,

ELIZABETH

ELIZABETH and MARY, JANE and MURIELL, of which children the ſaid THOMAS, JOHN, MARY and MURIELL, died unmarried, and the ſaid ELIZABETH married THOMAS GLEMHAM, eſq; who is dead without iſſue, and the ſaid JANE married OLIVER LE NEVE, eſq; and died without iſſue, whereby the petitioner became the ſole heir of ſir JOHN BOURCHIER, knight, firſt lord Berners, and is lineally deſcended from him.

Whereupon their lordſhips having conſidered as well of what was offered by the petitioner's counſel as by the counſel on his Majeſty's behalf, and the ſeveral proofs in this caſe, their lordſhips are of opinion, That the petitioner hath fully proved her claim to the ſaid barony of Berners in fee, and hath a right to the ſaid barony in fee.

Which report being read by the clerk was agreed to by the houſe, and the following reſolution and judgment was made, *viz.*

It is reſolved and adjudged by the lords ſpiritual and temporal in parliament aſſembled, That the ſaid CATHERINE, wife of RICHARD BOKENHAM, eſq; hath a right to the ſaid barony of Berners.

Ordered, That the lords with white ſtaves do attend his Majeſty with the ſaid reſolution and judgment.

The lord chamberlain acquainted the houſe, That the lords with white ſtaves (according to order) had attended his Majeſty, and laid before him the reſolution and judgment of this houſe made upon the claim of CATHERINE, wife of RICHARD BOKENHAM, eſq; to the barony of Berners. 3 June 1720.

The Barony of *LUMLEY.*

JOHN, lord Lumley, dying on the 11th of April, 1609. without iſſue, left his eſtate, by his laſt will and teſtament, and deeds of ſettlement, to his kinſman and heir male, RICHARD LUMLEY, eldeſt ſon and heir apparent of ROGER LUMLEY, eſq; ſon of ANTHONY LUMLEY, brother to JOHN, lord Lumley, his grandfather, but by the attainder of GEORGE LUMLEY, eſq; his father, the antient barony of Lumley became extinct, as appears from the following report and reſolutions of the houſe of peers.

Die Lunæ 23 Martij, 1723.

THE lord Delawar reported from the lords committees for privileges, to whom was referred the petition of ROBERT LUMLEY LLOYD, rector of St. Paul's Covent-Garden, preſented to his Majeſty, and by his Majeſty referred to this houſe, thereby ſuggeſting, That the petitioner is heir at law to RALPH, lord Lumley, and praying, That his Majeſty will be graciouſly pleaſed to give directions for a writ to be iſſued to ſummon the petitioner to the upper houſe of parliament; That the committee had directed a ſpecial report to be made to the houſe of the matter, as it appeared before them, which he was ready to make when their lordſhips will pleaſe to receive the ſame. Journ. dom. Procer.

Ordered, That the ſaid report be now received.

Accordingly his lordſhip reported from the ſaid committee as follows,

That the houſe having directed the proper officers to attend the committee with ſuch writs of ſummons, wills, records, and other writings, as might be proper and neceſſary for making out the petitioner's claim, or any way relating to the ſame, and ordered liberty to the petitioner to be heard by his counſel, as alſo counſel to be heard for the earl of Scarborough; and further directed, that notice ſhould

be given to his Majeſty's attorney general, that counſel might be likewiſe heard in his Majeſty's behalf; and counſel on the behalf of the ſaid parties, and of his Majeſty, attending accordingly.

The petitioner's counſel opened the nature of their claim, and produced the roll, upon which was entred the writ of ſummons, by which RALPH DE LUMLEY was ſummoned to parliament in the eighth year of the reign of RICHARD the IId, and informed the committee, That the ſaid RALPH DE LUMLEY, and ROBERT his eldeſt ſon, were both attainted of high treaſon, in the firſt year of the reign of king HENRY the fourth, and then produced an act of parliament made in the firſt year of the reign of king EDWARD the fourth, upon the petition of THOMAS LUMLEY, knight, couſin and heir to the ſaid RALPH DE LUMLEY, knight, that is to ſay, ſon to JOHN, ſon to the ſaid RALPH; whereby it was enacted, that the attainder of the ſaid RALPH DE LUMLEY ſhould be and was thereby reverſed; and produced the roll upon which was entred, the writ of ſummons, by which the ſaid THOMAS DE LUMLEY, knight, was ſummoned to parliament in the firſt year of the reign of EDWARD the fourth; and the petitioner's counſel then produced ſeveral inquiſitions *poſt mortem*, to prove, that the ſaid THOMAS DE LUMLEY, knight, baron de Lumley, had iſſue GEORGE DE LUMLEY, knight, baron of Lumley his eldeſt ſon; and that the ſaid GEORGE, lord Lumley, had iſſue THOMAS DE LUMLEY, knight, his eldeſt ſon, who died in the life time of his father; and that the ſaid THOMAS had iſſue RICHARD DE LUMLEY baron de Lumley; and that the ſaid RICHARD had iſſue JOHN DE LUMLEY, knight, baron de Lumley; and that the ſaid JOHN lord Lumley had iſſue GEORGE his eldeſt ſon.

And the petitioner's counſel informed the committee, that the ſaid GEORGE LUMLEY was attainted of high treaſon in the life time of his father, in the 29th year of the reign of king HENRY the eighth, and that he left iſſue JOHN his eldeſt ſon.

And the petitioner's counſel then produced an act of parliament made in the firſt year of the reign of king EDWARD the ſixth, upon the petition of the ſaid JOHN LUMLEY, eldeſt ſon of the ſaid GEORGE LUMLEY, late ſon and heir apparent of JOHN late lord Lumley deceaſed, whereby after a recital of the attainder of the ſaid GEORGE LUMLEY, by reaſon whereof the ſaid JOHN LUMLEY ſtood, and was a perſon in his lineage and blood corrupted, and deprived of all degree, eſtate, name, fame, and of all other inheritance, that ſhould or might have come to him from his ſaid father, or from the ſaid JOHN late lord Lumley his grandfather, if the ſaid GEORGE his late father had not been attainted, and alſo of all other inheritance that ſhould or might by poſſibility have come to him by any other his collateral anceſtors on his ſaid father's ſide, to whom he ſhould or might have conveyed himſelf as next couſin and heir of blood, by meſne degrees by his ſaid father; it was enacted, that the ſaid JOHN LUMLEY, and the heirs males of his body coming, ſhould have, hold, enjoy, and bear the name, dignity, eſtate, and preheminence of a baron of this realm; and that he and his ſaid heirs males of his body coming, might and ſhould be accepted, taken, known, reputed, called, and written from thenceforth by the name of the lord Lumley; and that he and the heirs males of his body ſhould have and enjoy, in and at all parliaments, and all other places, the room, name, place, and voice of a baron of this realm; and that the ſaid JOHN LUMLEY and his heirs might be and ſhould be reſtored, and enhabiled only in blood as ſon and heir and heirs to the ſaid GEORGE LUMLEY, and as couſin and heir and heirs of the ſaid JOHN late lord Lumley, and made only heir and heirs in blood, as well to the ſaid GEORGE, as to the ſaid JOHN, late lord Lumley, and either of them, by the name of lord Lumley.

And the petitioner's counſel produced an inquiſition taken after the death of the ſaid JOHN lord Lumley at Southwark in the county of Surrey, the 30th of May, in the ſeventh year of the reign of king JAMES the firſt, to prove that the ſaid JOHN lord Lumley died the 11th of April then laſt, without iſſue, and

that

that SPLANDIAN LLOYD was his couſin and next heir, *viz.* eldeſt ſon of BARBARA WILLIAMS then deceaſed, ſiſter of the ſaid JOHN, lord Lumley, and that the ſaid SPLANDIAN LLOYD was then of the age of 40 years, and upwards.

And the petitioner's counſel then produced a book from the college of arms, wherein a viſitation of the noble families in the county of Surrey, taken in the year 1623, is entred, as alſo a commiſſion under the great ſeal, authorizing the ſaid viſitation, to prove that the ſaid SPLANDIAN LLOYD died without iſſue; and alſo ſeveral deeds and wills, to prove that HENRY LLOYD, the ſaid SPLANDIAN's next brother, had iſſue HENRY his eldeſt ſon and heir; and that the ſame HENRY had iſſue, HENRY his eldeſt ſon and heir; and that the laſt named HENRY had iſſue the petitioner ROBERT LLOYD his eldeſt ſon and heir.

And the petitioner's counſel inſiſted, That the ſaid barony of Lumley was a barony in fee ſimple, and that the ſaid JOHN, the laſt lord Lumley, was by the ſaid act of parliament of the firſt of EDWARD the ſixth, reſtored to the ſaid barony in fee-ſimple; and that the petitioner being heir general of the ſaid JOHN lord Lumley, was entitled to have a writ to ſummon him to the upper houſe of parliament.

And then the counſel for the earl of Scarborough were heard, who inſiſted, that it was not clear, that the barony of Lumley created by RICHARD the ſecond was created by writ, or that it was a barony in fee-ſimple, no evidence being given by the petitioner, that he made any ſearch in the proper offices to diſcover whether there was any patent of creation of the ſaid barony; and all who had enjoyed the barony being lineally deſcended from the firſt baron, and deriving their deſcent thro' males only, were conſequently entitled to it, tho' it were a barony in tail male only.

That admitting it to be a barony in fee-ſimple, yet GEORGE LUMLEY being attainted and executed in the life of JOHN lord Lumley his Father, upon the death of the ſaid JOHN lord Lumley, the ſaid barony became extinct.

That by the ſaid act of parliament of the firſt of EDWARD the ſixth, a new barony of Lumley was created, and limited by expreſs words to JOHN lord Lumley in tail male, and that upon his death without iſſue male, the ſaid barony likewiſe became extinct.

That the attainder of GEORGE LUMLEY is not reverſed by the ſaid act, but remains yet in force; and that the reſtitution of the ſaid JOHN lord Lumley in blood only, while the attainder remains unreverſed, could not poſſibly revive the antient barony, which was before extinct, and merged in the crown, in conſequence of that attainder.

That the conſtruction of the act of the firſt of EDWARD the ſixth, contended for by the petitioner, would have this abſurdity, if it prevailed, (*viz.*) That the ſame act muſt give the ſame barony to the ſame perſon under two different limitations, one in tail male, the other in fee-ſimple, and both in poſſeſſion, and was not therefore to be admitted.

That this was yet more clear from ſeveral clauſes and proviſoes in the ſaid act, from which it was evident that it was not the intention of the legiſlature to revive the antient honour.

That there was an inſtance in the ſame family, that a bare reſtitution in blood, tho' by act of parliament, doth not revive the honour without reverſing the attainder by which it was extinguiſhed.

To ſupport which aſſertion they produced an act of parliament made in the 13th year of HENRY the fourth, upon the petition of JOHN LUMLEY, knight, ſecond ſon of RALPH the firſt lord Lumley, taking notice that the ſaid RALPH lord Lumley, and THOMAS his eldeſt ſon, were both attainted of high treaſon, by which it was enacted, That the ſaid JOHN LUMLEY ſhould be reſtored in blood as ſon and heir of the ſaid RALPH lord Lumley, and heir to the ſaid THOMAS LUMLEY; and the ſaid earl's counſel inſiſted, that notwithſtanding the ſaid act of reſtitution of the ſaid JOHN LUMLEY, the ſaid JOHN or THOMAS his ſon were never ſummoned to parliament, until the attainder of the ſaid RALPH

lord Lumley was reverſed by the ſaid act of parliament of the firſt of EDWARD the fourth, produced by the petitioner's counſel.

And Mr. GEORGE HOLMES, deputy keeper of the records in the Tower, was examined, to prove that he had made diligent ſearch in the records of the Tower, and did not find, that after the attainder of the ſaid RALPH lord Lumley there was any ſummons to parliament directed to the ſaid JOHN Lumley, knight, his ſon, or to the ſaid THOMAS LUMLEY, knight, his grandſon, until the firſt year of the reign of EDWARD the fourth.

And the ſaid earl of Scarborough's counſel produced the record of the attainder of the ſaid GEORGE LUMLEY, and alledged that the ſaid earl is heir male of the firſt lord Lumley, and to prove the ſame they produced ſeveral ſettlements and wills, which were read, (*viz.*) A ſettlement made by the ſaid JOHN the laſt lord Lumley, dated 23 Auguſt, 29 ELIZABETH, *anno* 1587, whereby the ſaid JOHN lord Lumley, to the intent that his eſtate might remain in his name and blood, and in the houſe and family of the ſaid lord Lumley, limited the bulk of his eſtate, in failure of iſſue of his body, to the firſt and other ſons of BARBARA WILLIAMS his ſiſter in tail male, remainder to ROGER LUMLEY therein named; and deſcribed to be ſon of ANTHONY LUMLEY in tail male, with other remainders; and thereby ſettled two annuities of 20*l.* and 100*l.* upon the ſaid ROGER LUMLEY, and the heirs males of his body, being of the blood and kindred of the ſaid lord Lumley, in which ſettlement there was a power of revocation.

And the ſaid ROGER LUMLEY having afterwards iſſue, RICHARD his eldeſt ſon, great grandfather of the ſaid earl of Scarborough, the ſaid JOHN lord Lumley, by a ſecond ſettlement dated the ſecond of May, 39 ELIZABETH, *anno* 1597. In conſideration (*inter al'*) of the natural love and affection which the ſaid lord Lumley bore to RICHARD LUMLEY, being of his blood and kindred, that is to ſay, ſon and heir apparent of ROGER LUMLEY, ſon of ANTHONY LUMLEY deceaſed, ſecond ſon of RICHARD lord Lumley deceaſed, father of JOHN lord Lumley deceaſed, father of GEORGE LUMLEY, eſq; deceaſed, father of the ſaid JOHN lord Lumley, and for the advancement of him the ſaid RICHARD LUMLEY, and the heirs males of his body, and of the heirs males of the body of the ſaid ROGER LUMLEY his father, ſettled the bulk of his eſtate, in failure of iſſue of his body, to the uſe of the ſaid RICHARD LUMLEY, in tail male, remainder to the heirs males of the body of the ſaid ROGER LUMLEY, with other remainders over, with a power of revocation.

That the ſaid JOHN lord Lumley, by a third ſettlement, dated 10 Mar. 4. JAC. I. *anno* 1606. for the like conſiderations as in the ſaid ſecond ſettlement, and wherein the ſaid RICHARD LUMLEY is deſcribed to be of his blood and kindred in the ſame manner, and by ſuch deſcents as are mentioned in the ſaid ſecond ſettlement, ſettled the bulk of his eſtate, in failure of the heirs of his body, to the uſe of the ſaid RICHARD LUMLEY for his life, and to his firſt and other ſons in tail male, with like eſtates to the two brothers of RICHARD, (*viz.*) GEORGE and JOHN LUMLEY, for their lives and their ſons reſpectively in tail male, remainder to the right heirs of the ſaid lord Lumley, with a power of revocation.

That the ſaid lord Lumley, by his fourth and laſt ſettlement dated 14 Febr. 6 JAC. I. *anno* 1608, ſettled the bulk of his eſtate after the death of himſelf and the lady ELIZABETH his wife, and failure of heirs of his body, to the uſe of truſtees for twenty one years, and then to the uſe of the ſaid RICHARD LUMLEY, and his firſt and other ſons in tail male, with like eſtates to his ſaid two brothers, GEORGE and JOHN LUMLEY, and their ſons reſpectively, remainder to the right heirs of the ſaid lord Lumley.

And the ſaid earl's counſel alſo produced the ſaid JOHN, lord Lumley's will, dated the 28th of January, in the 3d year of king JAMES the firſt, and the ſaid inquiſition taken after his death; in both which the ſaid RICHARD LUMLEY is mentioned and deſcribed to be the ſaid lord Lumley's kinſman in the ſame man-

ner as in the ſaid ſettlements, and they alſo produced the will of the lady ELIZABETH LUMLEY, relict of the ſaid lord Lumley, dated the 6th of November, in the fourteenth year of the reign of king JAMES the firſt, wherein ſhe gave to the ſaid RICHARD LUMLEY, her husband's kinſman, all her houſhold-ſtuff, marbles, and pictures of the caſtle of Lumley, to remain there as heir-looms, under which ſettlements and wills, the ſaid eſtates, or the greateſt part thereof, and the ſaid heir-looms, and particularly the caſtle of Lumley, are, and have ever ſince the death of the ſaid JOHN lord Lumley and his lady, been enjoyed by the ſaid earl of Scarborough and his anceſtors.

And the ſaid earl's counſel alſo produced an act of parliament, made in the twenty-firſt year of king JAMES the firſt, to enable the ſaid RICHARD LUMLEY to ſell part of the eſtate ſettled upon him by the ſaid lord Lumley, in the preamble whereof the ſaid RICHARD LUMLEY is mentioned to be neareſt kinſman of the name and blood of the ſaid lord Lumley; and an inſtrument under the hand and ſeal of HENRY LLOYD the petitioner's great grandfather, dated the 26th of February, 1623, whereby he gave his conſent to the ſaid act of parliament, was alſo produced and read.

And the ſaid earl's counſel alſo produced letters patent under the great ſeal of England, dated the 12th of July, in the 4th year of king CHARLES the firſt, whereby his then Majeſty created the ſaid RICHARD LUMLEY lord viſcount Lumley of Waterford in the kingdom of Ireland, and in the preamble thereof mentions him, to be of the ancient and noble family of the Lumleys of Lumley-caſtle.

And the ſaid earl's counſel informed the committee, that the ſaid RICHARD LUMLEY, lord viſcount Waterford, had iſſue JOHN his eldeſt ſon, who died in his father's life-time, and left RICHARD his eldeſt ſon, father of the preſent earl of Scarborough, and to prove the ſame, produced the will of the ſaid JOHN LUMLEY, dated the 2d of October, 1658.

And the ſaid earl's counſel alſo produced letters patent under the great ſeal of England, dated the 31ſt of May, in the 33d year of the reign of king CHARLES the ſecond, whereby his ſaid Majeſty created the preſent earl of Scarborough's father, a peer and baron of this realm, by the ſtyle and title of baron Lumley de Lumley in the county palatine of Durham, and in the preamble thereof mentions him to be deſcended from the ancient family of the LUMLEYS in the county of Durham.

And it being deſired by the ſaid earl's counſel, that the journal of this houſe might be produced, to ſhew that the preſent earl of Scarborough was, by his Majeſty's writ of ſummons, in the firſt year of his reign, called up to his father's barony (by the name of RICHARD LUMLEY de Lumley in the county palatine of Durham, chevalier,) and took his place by virtue of the ſaid writ of ſummons, the ſame was admitted by the petitioner's counſel.

And upon the whole the earl's counſel inſiſted, that the ſaid earl is well intitled to the ſaid barony of Lumley, and that the petitioner hath not the leaſt colour of right to the ſame; nor have any of the petitioner's anceſtors, ſince the death of JOHN lord Lumley, which happened the 11th of April 1609, ever claimed the ſaid barony, though it appeared they were under no impediment to purſue their claim, if they had any.

And then the petitioner's counſel were heard upon their reply, and afterwards the counſel on behalf of his Majeſty were heard, and then the counſel were ordered to withdraw.

And upon the whole matter the committee came to this reſolution, That the petitioner hath not any right to a writ of ſummons to parliament, as prayed by his petition.

Which report was read by the clerk, and the ſaid reſolution being read a ſecond time, was agreed to by the houſe.

Ordered, that the ſaid reſolution be laid before his Majeſty by the lords with white ſtaves.

APPENDIX.

CONTAINING

Several papers collected from the Bodleian Library &c. relating to baronies.

[In the Bodleian Library in the Aſhmolæan collection 7133. 825. 5. *A Treatiſe of deſcents of ſeveral baronies in England, by Robert Glover*, as follows.]

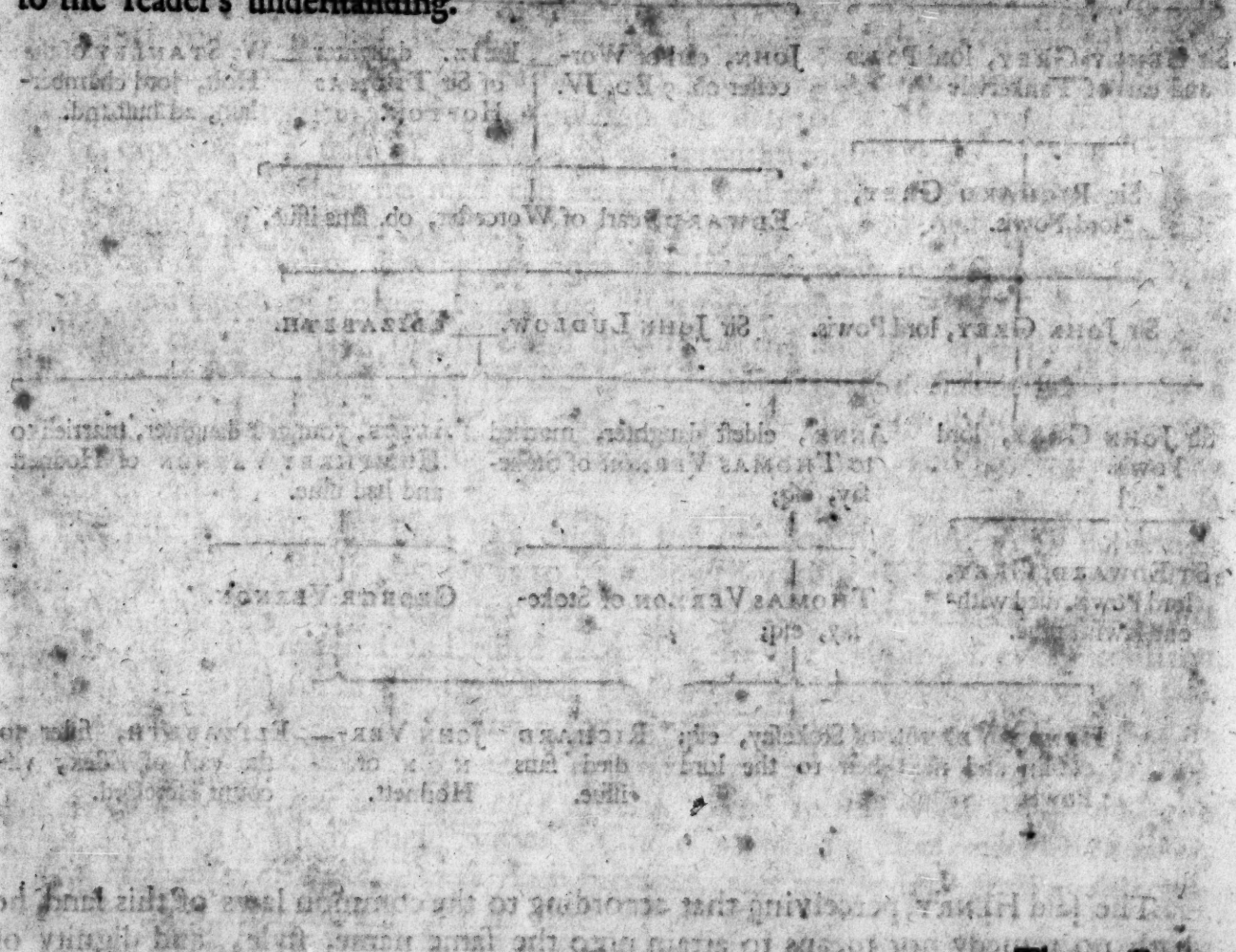
I.

The title of HENRY VERNON of Stoke-ſay in the county of Salop, eſq; to the name and ſtyle of lord Powis, in the right of ANNE his grandmother, couſin and coheir of EDWARD the laſt lord Powis.

THE ſaid HENRY tendreth his claim and groundeth the ſame upon the ancient and laudable cuſtom of this realm of England, agreeable to the cuſtom and uſage of other realms and dominions adjoyning thereunto: where women are capable of feodales and the deſcendants of them likewiſe poſſeſs their feodale dignities, ſtyles and titles.

And firſt, it is to be underſtood, that king EDWARD the 2d, ſometime king of England, noble progenitor to the Queen's moſt excellent Majeſty that now is, in the ſeventh year of his reign, cauſed his writ of ſummons to be directed to ſir JOHN CHARLETON knight, commanding him by the ſame to appear at his parliament holden at Weſtminſter the ſame year, by the name of ſir. JOHN CHARLETON of Powis, chevalier. And by virtue of the ſame writ, the ſaid ſir. JOHN appeared and ſat in the ſaid parliament as a baron of this land: And by that authority was taken, reputed, and known as a baron of this realm by the name of lord Powis during his life. And afterward the ſaid JOHN lord Powis dyed; after whoſe death the ſame name and barony deſcended unto JOHN CHARLETON, ſon and heir of the ſaid JOHN, which JOHN, ſon of JOHN, was in the like manner taken, reputed, and known as a baron of this realm by the name of lord Powis during his life. And after the deceaſe of the ſaid JOHN the ſon, the ſame name and barony did deſcend to JOHN his ſon, and heir of the ſaid JOHN the ſon, which third JOHN was in like manner taken, reputed, and called as a baron of this land, by the name of lord Powis during his life. And after the deceaſe of the ſaid third JOHN, the ſame name and barony did deſcend to JOHN his ſon and heir, which likewiſe enjoyed the name and ſtyle of lord Powis during his life, but he left no iſſue of his body begotten. So that the ſame name, ſtyle and barony after the death of the ſaid fourth JOHN, without iſſue, as is aforeſaid, did deſcend to EDWARD his brother and heir. Which EDWARD was in like ſort taken, reputed, and called as a baron of this land by the name of lord Powis during his life. Which EDWARD, lord Powis, died without iſſue male of his body, leaving two daughters, JOAN the eldeſt daughter, and JOYCE the youngeſt, as it appeareth by matter

ter of record. And after the deceaſe of the ſaid EDWARD, the ſame name and ſtyle deſcended to HENRY GREY, ſon and heir of the beforenam'd JOAN, eldeſt daughter of the ſaid EDWARD, lord Powis; which HENRY in his mother's right was called and taken during his life by the name of lord Powis. And after the deceaſe of the ſaid HENRY, the ſame name and ſtyle deſcended to RICHARD, ſon and heir of the ſaid HENRY, which RICHARD was taken, reputed, and known as a baron of this realm by the name of lord Powis, and had iſſue a ſon, and a daughter called ELIZABETH, wedded to ſir JOHN LUDLOW, knight; the ſon's name was JOHN, who as heir to his father after his deceaſe enjoyed the name and ſtyle of lord Powis. And after the deceaſe of the ſaid JOHN, the ſon of RICHARD, the ſaid name and ſtyle deſcended to JOHN, his ſon and heir, who likewiſe enjoyed the ſame during his life. After whoſe deceaſe the ſaid name and ſtyle deſcended to EDWARD, ſon and heir of the ſaid JOHN, the ſon of JOHN, which EDWARD in like manner was taken, reputed, and called as a baron of this realm by the name of lord Powis, during his life, as many yet living do remember: And he the ſaid EDWARD, lord Powis, died without iſſue of his body lawfully begotten. After whoſe death, by the ancient uſage and cuſtom of England, the name and ſtyle of lord Powis is now deſcended, and ought of right to deſcend to the aforeſaid HENRY VERNON eſquire, as couſin and next heir to the ſaid EDWARD, late lord Powis. That is to ſay, ſon of THOMAS, ſon of ANNE, eldeſt daughter of ELIZABETH, daughter of the beforenam'd RICHARD, lord Powis, and ſiſter to JOHN, lord Powis, father of JOHN, lord Powis, the father of EDWARD, the laſt lord Powis, that died without lawful iſſue; as is aforeſaid. Which by this pedigree following is made plainer to the reader's underſtanding.



The pedigree

Sir JOHN CHARLETON, knight, created lord Powis by writ *an.* 7 EDW. II. — HAWIS daughter and heir to OWEN, lord Powis. — E

Sir JOHN CHARLETON, lord Powis. — MAUD, daughter to the lord Mortimer of Wigmore. — Si

Sir JOHN CHARLETON, lord Powis. — JOAN, daughter of the earl of Stafford. — T

1 Sir JOHN CHARLETON, lord Powis, died ſans iſſue.

2 Sir EDWARD C lord Powis aft

Sir JOHN GREY. — JOAN eldeſt daughter.

1 Sir HENRY GREY, lord Powis and earl of Tankervile

JOHN, ceſter o

Sir RICHARD GREY, lord Powis.

EDWA

Sir JOHN GREY, lord Powis. — Sir J

Sir JOHN GREY, lord Powis.

Sir EDWARD GREY, lord Powis, died without lawful iſſue.

ANNE, eldeſt to THOMAS V ſay, eſq;

THOMAS VER ſay, eſq;

HENRY VERNON of Stokeſay, eſq couſin and next heir to the lor Powis.

The ſaid HENRY, perceiving that hath no remedy nor means to att lord Powis by preheminence of uſing and taking the ſame nam thing that poſſibly might be diſp his moſt gracious Sovereign, or ſe other perſon, and to avoid ſuch proceeding might enſue: He ha known his ſaid intereſt and title, reaſons, that to his underſtanding

laugh- heir to lord

ter to ner of

ughter arl of

2
DWARD CHARLETON, Powis after his brother.

AN eldeſt ughter.

EDMUND of Woodſtock, third ſon to king EDW. I. created earl of Kent and lord Wake, 15 EDW. II.

MARGARET, daughter and heir to JOHN lord Wake of Lydall, Bourne, Deeping and Cottingham and Knaresburgh.

Sir THOMAS HOLLAND, knight, created earl of Kent and lord Wake, 34 EDWARD III.

JANE, ſecondly married to EDWARD the Black Prince, and had iſſue RIC. II. who died ſans iſſue.

THOMAS HOLLAND, earl of Kent and lord Wake, married ALICE, daughter of Arundel.

to RICHARD FITZ ALAN, earl

ELIZABETH, daughter and one of the heirs of THOMAS HOLLAND, earl of Kent and lord Wake.

JOYCE, youngeſt daughter.

JOHN, lord Typtofte.

1 2
JOHN, earl of Worceſter ob. 9 ED. IV.

ELIZ. daughter of Sir THOMAS HOPTON.

W. STANLEY of the Holt, lord chamberlain, 2d huſband.

EDWARD, earl of Worceſter, ob. ſans iſſue.

. Sir JOHN LUDLOW. ELIZABETH.

, eldeſt daughter, married HOMAS VERNON of Stoke- eſq;

ALICE, youngeſt daughter, married to HUMPHREY VERNON of Hodnett and had iſſue.

MAS VERNON of Stoke- eſq;

GEORGE VERNON.

keſay, eſq; o the lord

RICHARD died ſans iſſue.

JOHN VERNON of Hodnett.

ELIZABETH, ſiſter to the earl of Eſſex, viſcount Hereford.

ving that according to the common laws of this land, he
s to attain unto the ſame name, ſtyle, and dignity of
nce of his birth, rightly unto him deſcended, but by
ne name and ſtyle; before he would enterprize the
be diſpleaſing to the Queen's moſt excellent Majeſty,
n, or ſeem to prejudice or derogate the right of any
id ſuch further inconvenience, as for want of orderly
He hath thought it good in this manner to make
d title, and to ſet down ſome of a great number of
tanding do make to the furtherance thereof. With all
humility

Sir JOHN CHARLETON, knight, created lord Powis by writ *an.* 7 EDW. II. — HAWIS daughter and heir to OWEN, lord Powis.

Sir JOHN CHARLETON, lord Powis. — MAUD, daughter to the lord Mortimer of Wigmore.

Sir JOHN CHARLETON, lord Powis. — JOAN, daughter of the earl of Stafford.

Sir JOHN CHARLETON, lord Powis, died ſans iſſue.

Sir EDWARD CHARLETON, lord Powis after his brother.

Sir JOHN GREY. — JOAN eldeſt daughter.

Sir HENRY GREY, lord Powis and earl of Tankervile

Sir RICHARD GREY, lord Powis.

Sir JOHN GREY, lord Powis.

Sir EDWARD GREY, lord Powis, died without lawful iſſue.

EDMUND of Woodſtock, third ſon to king EDW. I. created earl of Kent and lord Wake, 15 EDW. II. — MARGARET, daughter and heir to JOHN lord Wake of Lydall, Bourne, Deeping and Cottingham and Knaresburgh.

Sir THOMAS HOLLAND, knight, created earl of Kent and lord Wake, 34 EDWARD III. — JANE, ſecondly married to EDWARD the Black Prince, and had iſſue RIC. II. who died ſans iſſue.

THOMAS HOLLAND, earl of Kent and lord Wake, married ALICE, daughter to RICHARD FITZ ALAN, earl of Arundel.

ELIZABETH, daughter and one of the heirs of THOMAS HOLLAND, earl of Kent and lord Wake.

JOYCE, youngeſt daughter. — JOHN, lord Typtoſte.

JOHN, earl of Worceſter ob. 9 ED. IV. — ELIZ. daughter of Sir THOMAS HOPTON. — W. STANLEY of the Holt, lord chamberlain, 2d huſband.

EDWARD, earl of Worceſter, ob. ſans iſſue.

Sir JOHN LUDLOW. — ELIZABETH.

ANNE, eldeſt daughter, married to THOMAS VERNON of Stokeſay, eſq;

ALICE, youngeſt daughter, married to HUMPHREY VERNON of Hodnett and had iſſue.

THOMAS VERNON of Stokeſay, eſq;

GEORGE VERNON.

HENRY VERNON of Stokeſay, eſq; couſin and next heir to the lord Powis.

RICHARD died ſans iſſue.

JOHN VERNON of Hodnett. — ELIZABETH, ſiſter to the earl of Eſſex, viſcount Hereford.

The ſaid HENRY, perceiving that according to the common laws of this land, he hath no remedy nor means to attain unto the ſame name, ſtyle, and dignity of lord Powis by preheminence of his birth, rightly unto him deſcended, but by uſing and taking the ſame name and ſtyle; before he would enterprize the thing that poſſibly might be diſpleaſing to the Queen's moſt excellent Majeſty, his moſt gracious Sovereign, or ſeem to prejudice or derogate the right of any other perſon, and to avoid ſuch further inconvenience, as for want of orderly proceeding might enſue: He hath thought it good in this manner to make known his ſaid intereſt and title, and to ſet down ſome of a great number of reaſons, that to his underſtanding do make to the furtherance thereof. With all

humility and obedience referring the trial and examination of the whole cauſe to the learned cenſure of ſuch as it ſhall pleaſe her moſt excellent Majeſty to appoint, for the hearing and determining thereof.

And becauſe it being a matter of chivalry, the laws thereof are partly martial, fit for the field, and partly civil for the uſe of arms and titles: It ſeemeth unto him the ſaid HENRY, that the ſame is not determinable by the common laws of this realm; as may well be proved by ſundry precedents upon the like caſes uſually wont to be heard and determined in the court of chivalry before the high conſtable and marſhal of England: namely the plea of REGINALD, lord Grey of Ruthyn, and ſir EDWARD HASTINGS, in king HENRY the IVth's time, for the title and arms of lord Haſtings, holden as parcell of the inheritance, and claimed by the woman, as this ſtile of Powis is: As alſo by old uſage time out of mind in the marſhalling and placing of great eſtates contrary to the common laws of the land. For example,

The common law doth no where teach or pronounce, that all the daughters of an earl ſhould immediately upon their father's creation be ladies, and that as well thoſe born before the creation, as after.

The common law ſaith not, that if an earl's daughter marry with an eſquire, ſhe holdeth ſtill her place and name, and that ſhe loſeth both marrying with a baron, but is of contrary ſentence.

By maxim of the common law, no eſtate of inheritance paſſeth by gift, but by theſe words to the donee and to his heirs, but the gift of a title of a baron, by virtue of a writ, is otherwiſe.

By the common law the King's gift is not good but by his letters patents, and that by ſpecial words of grant: But in the writ of ſummons there is neither mention of lord or baron, but knight of ſuch a place called for his advice and counſel to be given in the parliament: whereby no colour may be gathered of creation or erection of the perſon into the ſtate of a baron, and leaſt of all to be expounded a ſtate of inheritance, as notwithſtanding it is.

By the common law no man can be called lord of the manor of Dale, having not ſo much as a colour of right to it: but by the law of chivalry a man may be an earl of a county, having no right nor intereſt to it, nor one foot of land in it; and baron of a place, being the inheritance of a ſtranger.

By the common law, the ſtile and dignity of the anceſtor cometh not to the heir, the anceſtor living; but by the law of chivalry, the father being of the degree of a baron, and made an earl, the ſon is immediately inveſted in the title of his father's barony without words or ceremony, and contrary to the words of entail.

The rule of theſe and ſuch like caſes is not one and the ſame in all countries, but the cuſtom of every country is to be followed within the ſame for law. And ſo do all the doctors in civil law ſay, that titles and matters of honour and dignity are to be ordered and ruled according to the cuſtom of every country. They ſet it down for a principle that *conſuetudo in unaquaque regione eſt omnium dignitatum & juriſdictionum origo, forma & principium.* And ſo by BALD: *Conſuetudini ſtandum eſt diſponenti de nobilitate, & conſuetudines loci faciunt quem nobilem, qui aliis non eſſet nobilis.* And to this effect for Spain, one JOHN OTALARA uſeth theſe words. *Cauſæ nobilitatis ſunt mere peculiares, noſtræ Hiſpaniæ & quodammodo ſunt anomalæ, ideo non poſſunt propriè determinari per leges Romanorum, ſed de jure noſtro, &c.*

As in Germany the creation of a duke advanceth not the children of the perſon created, born before the creation, yet in England it is otherwiſe.

Women by birth in Germany enjoy the titles of ducheſſes, counteſſes and baroneſſes, yet are unable to enjoy dukedoms, earldoms, and baronies. In England, France and Spain women are capable of both, if in the grant no limitation be to the heirs males.

And of all other ſtates, the queſtion is leaſt doubtful in the ſtate of a baron: For all authors agree, that duke, marqueſs, and earl, were in the beginning but

names only of offices, and not of inheritance. But the name of a baron was a ſtate joined with fee, with juriſdiction over his own vaſſals in his own territory, as may appear by the antiquity of court barons. And the Dutch for a baron expreſſeth the thing, calling him *free heren*, that is a free lord within himſelf.

And BEATUS PHEHANUS writeth, "That in Burgundy ſuch a lord in old time "was called *alodius*, from whence our word lord ſeemeth to be borrowed.

England, France and Spain ſeem not much to differ in cuſtom concerning baronies; for in either country after the death of any baron, without heir male, the next iſſue of the eldeſt female being heir general to the ſaid baron, doth enjoy the firſt portion of the inheritance, together with the ſtyle, title and dignity. That the ſaid dignity hath from the beginning taken place, and had continuance in England, is hereafter plainly and plentifully proved by ſundry examples, in the times of the reign and government of almoſt all the Kings ſince the Norman Conqueſt.

And the reaſons why the ſame cuſtom ſhould be ſtill holden and kept, are many and forceable.

Firſt, the example of other the moſt noble and beſt governed kingdoms uſing the like.

Then the principal rule of the law, lib. I. ſect. 5. *Sed & ſi ſervus ff. de ventre inſpiciendo, Reipublicæ intereſt quod ordinum dignitas familiarumque ſalva ſit* *.

This contrary opinion is greatly derogatory to the honour and right of moſt of the ancient earls of this realm; which if they ſhall not be permitted to enjoy their titles deſcended to them from women, muſt cancel out of their ſtyles all the titles of the baronies by them uſed and deſcended unto them from women ſince their firſt anceſtor was created earl. For that they hold them neither by letters patents, neither by writ, but by continuance of the cuſtom, which the lawfulneſs thereof is ſufficienly evident againſt injurious ſurmiſe. Likewiſe every baron having two baronies, for ſo much as the writ maketh but of one, if this cuſtom were not, muſt blot out the other.

Further it is to be well weighed and conſidered, that by this uſage and cuſtom it is moſt clear and certain, that a barony with the ſtyle and dignity, may and ought to deſcend to the eldeſt daughter, or collateral heir of every baron dying without iſſue male, and to her iſſue (if the ſaid barony were firſt eſtabliſhed by writ) whether the alteration or change of that cuſtom may be beneficial to the commonwealth, which ſurely ſeemeth no; unleſs any be ſo impudent to maintain, that the entertaining of the ſtate of a baron is dangerous, which hitherto hath been reputed as a brazen wall to the Imperial Crown of this realm; and why ſhould this right grow now more offenſive amongſt us than in all ages before us? and to us, more than to all countries round about us? unleſs as grave policy brought it firſt in, impatient envy would now drive it out.

By ancient monuments of inſtitution of parliament, it appeareth that when the number of barons decayed, ſuch as held twenty knights fees, and could diſpend after 20*l.* for every fee, were perſons able to be called into parliament. If any man of leſs poſſeſſion had been called, he might have pleaded diſability. Whereby we may perceive, what care our anceſtors had for the preſervation of that degree, wherein the chief ſtrength of the realm is known to conſiſt; and upon the which higher dignities have been founded and grounded: And it is eaſier and more available, for every ſtate, that a perſon inheritable to a ba-

* CASSANEUS ſaith, *Eſt quoddam jus quod datur unicuique agnationis ſive familiæ, quod non videtur poſſe tranſire ex illa.* And he putteth for that right, *Arma & nomina familiæ quæ gradatim deveniunt ad ſucceſſores & alienari non poſſunt.*

The ſame CASSANEUS ſaith in another place, that in default of heirs, *nomen & arma* may be alienated by deviſe of teſtament, with the inheritance; and theſe be his words, *Arma & nomen domus & familiæ legari ſive concedi poſſunt cum hæreditate alieno, ſi non ſuperſit ſucceſſor de familia: & capitur legatarius nomen & arma gerere, alioqui perdit hæreditatem.*

Theſe laws ſhew a natural ſtudy and care for the conſervation of dignities in antient houſes, without reſpect of ſex.

rony,

rony, ſhould be accepted to ſerve his country as a baron, than by gifts of baronies out of the Crown, to create new men, neglecting the old.

Moreover it is to be had in mind, that this barony of Powis took beginning by writ; the writ created the perſon ſummoned to be a baron, which was none before: and ſo were the moſt ancient barons of England created by writ, and now many by letters patents, which manner of calling by letters patents was not uſed in England before king EDWARD the third's days. In the writ, the cuſtom is to be regarded, in the letters patents the words. A creation by writ is intended to work an eſtate of inheritance in new barons, which in law is a fee ſimple. For fee tail is not an inheritance by the device of the law, but of particular perſons. And therefore there muſt be words of entail to alter the common courſe thereof, if the dignity ſhall be underſtood to paſs to the males only; as once was the like writ, and never but once that hath been heard of, directed to ſir HENRY BROMFLETE, when he was created lord Veſcy, to him and to his heirs males, having theſe words inſerted.

Volumus vos & hæredes veſtros maſculos de corpore veſtro legitimè exeuntes barones de Veſcy exiſtere, &c. *Anno 27. H. 6. Teſte R. apud Weſtm. 24 die Jan.*

Becauſe in the writ *implicativè* there paſſeth inheritance as aforeſaid to the party to whom it is directed: the ſame is to be intended fee ſimple, unleſs the words in the ſame enforce to the contrary. And ſo the dignity collected by writ, for default of males paſſeth to the females, as fee ſimple inheritance doth.

If it ſeem an abſurdity that the dignity ſhould be extended to the heir female, for that the original creation was for advice and counſel in parliament, a place denied to that ſex: it is anſwered two ways. As why ſhould it more ſeem an abſurdity in England, than in France and Spain, that a woman ſhould enjoy the ſtyle and title of honours, and why not a woman to be a baroneſs, as well as to be the King's champion, to be counteſs marſhal, as to hold her land by knights ſervice, when as every man called by writ into the parliament is called by name of chevalier, not of baron: and nature enableth a woman better to give counſel than to be a warrior? Though man in his ſex be more excellent than woman, yet in quality we often ſee women to excell men, and therefore no reaſon to bar women of their right; eſpecially when the commonweal hereby taketh no detriment, as in this caſe it doth not. And therefore none but poſſeſſed with phrenſy, or an humour worſe than phrenſy, affirm that women are not capable of baronies, earldoms, dukedoms and kingdoms, where the manner of gift, laws, and cuſtoms of the country enable them; and that likewiſe they may not tranſport and convey to their iſſue and poſterity.

This ſcruple, both in the one and the other caſe, the law diſſolveth, ſaying, that though a woman be not liable to do the ſervice of a knight, yet ſhe may take to her a husband to do it for her; and where the law giveth the inheritance of a barony to a woman, which may be ſerved by a husband, and have a ſon to ſupply the place for her, it were ſmall policy to deny the ſtyle and dignity thereby to loſe the ſervice and ſtate of a baron in the common-weal: and ſo at this day, there ſhould have been but few barons, they moſt part claiming by women.

If moreover when the baron dieth leaving many daughters or couſins and heirs more than one (which is the ſtate of the caſe now in hand, for the laſt lord Powis had no males nor lawful iſſue) if it be now thought unreaſonable that the ſtyle and dignity ſhould deſcend to the eldeſt of them, but rather that the ſtate of the barony ſhould ceaſe and take end, it is an opinion that our anceſtors never liked of. And the cuſtom and common uſage of this realm, hath always been otherwiſe, as it may moſt manifeſtly appear by ſome examples drawn forth of a great number. And to be proved by her Majeſty's records remaining in the Tower of London, and in the Exchequer, and other authentical matter of reverend antiquity and great credit: ſuch as may ſufficiently ſerve to prove the antiquity and continuance of this cuſtom in baronies. For as

touching the ancient earldoms of this land, there is no man ſo meanly read in hiſtory, or ſo little acquainted with antiquity, but he knoweth that they ever went to the eldeſt iſſue female, how many degrees ſoever it were; and the iſſue of the younger daughters were uſually advanced to baronies fallen unto them, in the partition of the earldom, whereof alſo they and their poſterity uſed the names, ſtyles and title.

And therefore leaving to be over tedious by further rehearſal of further reaſons that may be produced to the furtherance of this aſſertion: as alſo for the like reſpect omitting the examples of earldoms heretofore denied, among the heirs general according to the rule of the cuſtom of this realm of England ſo often before mentioned: Hereafter follow the examples before premiſed, proving the general allowance of that cuſtom ever ſince the time of the Norman conqueſt.

Not all, nor ſo many as might by a great many be ſhewed, but enough to content and ſatisfy the wiſe and moſt reaſonable; ſuch as thoſe be, who ſhall have to do in this matter.

Examples of ſuch as after the deceaſe of a baron or peer of this realm, without iſſue male, in right of their wives, mothers, grandmothers, or great-grandmothers, having been the eldeſt daughters, or coheirs to the ſaid baron, have enjoyed the name, ſtyle and dignity of the ſaid barony, according to the moſt antient uſage and laudable cuſtom of this realm of England.

The barony of Schelford in the county of Nottingham, in the days of king STEPHEN.

Sir RALPH HANSELYN, lord and baron of Schelford.

1	2
ROSE, eldeſt daughter and coheir, was married to THOMAS BARDOLPH, younger brother to the lord Bardolf.	The younger daughter and coheir was married to EVERINGHAM.

DODO BARDOLPH, baron of Schelford in right of his mother, had iſſue.

Sir WILLIAM EVERINGHAM, knight.

Sir ADAM EVERINGHAM, knight.

The

The barony of Brune in Cambridgeſhire, in the days of king HENRY I.

Sir PAYN PEVERELL, baron of Brune.

1	1	2	3	4
Sir WILLIAM PEVERELL, lord of Brune, died ſans iſſue.	MAUDE, of Diver, eldeſt daughter died ſans iſſue.	ALICE, ſecond daughter, wife toſir HAMMOND PECHE.	ROYSE, third daughter, lady Roos.	ASCELYNE, the fourth daughter, married to one WATERVILE.
		Sir GILBERT PECHE, baron of Brune in Cambridgeſhire, in the right of his mother.	ALBREDA DE HARECOURT.	ROGER, of Torpell, who had iſſue.
			GEFFREY, and divers other ſons and daughters.	

The barony of Grove, near Retford in Nottinghamſhire, in the days of king JOHN.

Sir GILBERT ARCHES, Baron of Grove.

1	2
THEOPHANY, the eldeſt daughter, was married to MALVISINE HERCY, who in her right was baron of Grove, and had iſſue.	ISABEL, the youngeſt daughter, married to ſir WILLIAM RUFUS, knight.
	A daughter married to ROGER MORTYNE.
	WILLIAM, of Morteyne.

The barony of Hengham in Norfolk, in the days of king JOHN.

HUBERT DE RYE, baron of Hengham.

1	2
ALEVA, the eldeſt daughter, was married to JOHN MARESCHALL, who in her right was lord and baron of Hengham.	ISABELL, the youngeſt daughter, was married to ROGER CRESCY.
	STEPHEN CRESCY, was married and had iſſue.

The barony of Wolverley in Hertfordſhire, in the days of king JOHN.

Sir GERARD LIMESLY, baron of Wolverley.

Sir JOHN of Limeſly, lord and baron of Wolverley, died ſans iſſue.	1 BASILIA, the eldeſt ſiſter, was married to ſir GERARD of Odingſels, a Flemmnyge.	2 ALICE, the youngeſt ſiſter, was married to ſir HENRY PINKNEY.
	Sir WILLIAM of Odingſels, lord and baron of Wolverley in right of his mother, had iſſue.	Sir HENRY PINKNEY.

The barony of Morpeth in Northumberland, in the days of king HENRY the third.

Sir ROGER of Merley, lord and baron of Morpeth.

1 MARY, the eldeſt daughter, was married to WILLIAM of Greyſtoke.	2 ISABELL, the youngeſt daughter, was married to ROBERT of Somerville.
Sir WIILIAM FITZ WILLIAM of Greyſtoke, lord and baron of Morpeth in the right of his mother.	Sir PHILIP of Somerville, married and had iſſue.

The barony of Cory Malett in Somerſetſhire, in the days of HENRY the third.

Sir WILLIAM MALETT, lord and baron of Cory Malett.

Sir WILLIAM MALETT, lord and baron of Cory Malett, died ſans iſſue.	1 HELEWISE, the eldeſt ſiſter, was married to ſir HENRY POYNTZ, knight.	2 MABILLE, the youngeſt ſiſter, was married to HUGH DE VINONIA.
	Sir NICHOLAS POYNTZ, lord and baron of Cory Malett, in the right of his mother.	WILLIAM, the ſon of HUGH DE VINONIA.
		JOHANNE, wife to ſir REIGNOLD FITZPEIRS.

The

The barony of Norton in Nottinghamſhire, in the days of king HENRY the third.

Sir ROBERT, of Aufreton, lord and baron of Norton.

- Sir THOMAS, of Aufreton, baron of Norton, died without iſſue.
- 1 ALICE, the eldeſt ſiſter, was married to WILLIAM CHAWORTH.
  - Sir THOMAS CHAWORTH, lord and baron of Norton, in the right of his mother.
- 2 AVICE, ſecond ſiſter, was married to ſir ROBERT LATHUM, knight.
  - Sir THOMAS LATHUM, mar. and had iſſue.

The barony of Eywas Lacy in the county of Hereford, in the days of king HENRY the third.

Sir GILBERT LACY lord of EWYAS.

- Sir WALTER LACY, lord of Ewyas, died ſans iſſue.
- 1. MAUDE, the eldeſt ſiſter, was married to ſir GEOFFREY GENEVILE, who in her right was lord of Ewyas.
- 2. MARGARET, the younger ſiſter, was mar. to ſir JOHN VERDON.
  - THEOBALD, lord Verdon of Alueton, married and had iſſue.

The barony of Weſtmerland, in the days of king HENRY the third.

Sir ROBERT of Vypount, lord and baron of Weſtmerland.

- 1 ISABELL the eldeſt daughter, was married to ſir ROGER of Clifford, who in her right was lord of Weſtmerland, and had iſſue.
- 2 IDONEA, the younger daughter, was married to ſir ROGER LEYBOURNE, knight.
  - Sir WILLIAM LEYBOURNE, knight.
    - THOMAS LEYBOURNE.

The

The barony of Folkſtone in Kent, in the days of king HENRY the third.

Sir HAMON of Crevequer, lord and baron of Folkſtone in Kent.

1	2	3	4
AGNES, eldeſt daughter, was marr. to ſir JOHN of Sandwich, who in her right was lord and baron of Folkſtone.	ISOLD, the ſecond daugh. was mar. to NICHOLAS of LENHAM.	HELENE, the third daug. was mar. to Betram of Crivil.	ISABEL, the 4th. daug. was ma. to HENRY de Gaunt.

Sir JOHN of Sandwich, baron of Folkſtone.	JOHN of Lenham.	JOHANNE, wife to RICHARD of Rokeſley.

JULIAN, was marr. to ſir JOHN SEGRAVE, who in her right was lord and baron of Folkſtone.

The barony of WALLOVERE in Northumberland, in the days of king HENRY the third.

Sir ROBERT of Muſchamp, lord and baron of Wallovere.

1	2	3
CICELY, eldeſt daugh. was married to ODONEL of Ford.	MARY, the ſecond daugh. was marr. to the earl of Stratherne in Scotland.	ISABEL, the 3d daugh. was married to WILLIAM of Huntercombe.

ISABEL, daughter of CICELY, was marr. to ſir ADAM of Wygton, who in her right was lord and baron of Wallovere.	MURIEL and MARY.	WALTER of Huntercombe.

The barony of Kilpeck in the county of Hereford, in the days of king HENRY the third.

Sir HENRY, lord and baron of Kilpeck.

1	2
ISABELL, the eldeſt daughter, was married to ſir ROBERT WALERAN, who in her right was lord and baron of Kilpeck.	JOHANNE, the youngeſt daugh. was marr. to ſir PHILIP MARMYON.

Sir ROBERT WALERAN, baron of Kilpeck.	MAZARA, wife to RALPH CROMWELL.

JOHANNE, wife to ALEXANDER FREVILLE.

The barony of Abergavenny in Wales, in the days of king EDWARD the firſt.

Sir WILLIAM CANTELUPE, lord and baron of Abergavenny.

1	1	2
Sir GEORGE CANTELUPE, lord and baron of Abergavenny, died ſans iſſue.	JOHANNE, the eldeſt ſiſter, was married to ſir HASTINGS, who in her right was lord of Abergavenny.	MELISCENT, the younger ſiſter, was married to EUDO LA ZOUCHE.
	Sir JOHN HASTINGS, lord of Abergavenny.	WILLLIAM, lord Zouche of Haringworthe.
		EUDO, lord Zouche of Haringworthe.

The barony of Ewyas Harald in the marches of Wales, in the days of king EDWARD the firſt.

Sir JOHN FREGOZ, lord of Ewyas Harald.

1	2
CLARITIA, the eldeſt daughter, married to ſir ROGER DE LA WARE, who in her right was lord of Ewyas Harald and had iſſue.	SIBILL, the youngeſt daughter, was married to ſir WILLIAM of Grandſon.
	Sir OTTES of Grandſon.
	Sir THOMAS of Grandſon.

The barony of Wardon in the county of Northampton, in the days of king EDWARD the firſt.

Sir WALTER LEDETT, lord and baron of Wardon.

1	2
ALICE, the eldeſt daughter, was married to WILLIAM LATYMER, the younger, who in her right was baron of Wardon, his father living, and had iſſue.	CHRISTIAN, the younger daughter, was married to JOHN LATYMER.
	THOMAS LATYMER.
	WARYNE LATYMER.

The barony of Creke in the county of Norfolk, in the days of king EDWARD the firſt.

Sir ROBERT, of Creke, baron of Creke.

1. Sir BARTHOLOMEW, lord of Creke, of whom there is no iſſue.

2. MARGARET, the eldeſt ſiſter, was married to JOHN of Thorpe.

   ROBERT FITZ JOHN, of Thorpe, ſon and heir of MARGARET.

   Sir JOHN of Thorpe, lord and baron of Creke in the right of his grandmother.

3. ISABEL, the ſecond ſiſter, was married to VALOYNES.

   ROBERT DE VALOYNES, was married and had iſſue.

   ROYSE, wife to EDWARD PAKINHAM.

4. DIONYSIA, AGNES, CICELY, the other ſiſters, left no iſſue.

The barony of Egremond and Cockermouth in the county of Cumberland, in the days of king EDWARD the firſt.

Sir RICHARD LUCY, lord of Egremond.

1. AMABILLE, the eldeſt daughter, was married to LAMBERT of Moulton.

   Sir THOMAS MOULTON, lord of Egremond in the right of his mother, married and had iſſue.

2. ALICE, the youngeſt daughter, married to ALAN of Moulton, had iſſue.

   Sir THOMAS MOULTON, lord Lucy of Cockermouth in the right of his mother, who had iſſue.

The barony of Tamworth in the county of Warwick, in the days of king EDWARD the firſt.

Sir PHILIP MARMYON, lord and baron of Tamworth.

1. JOHANNE, the eldeſt daughter, was married to WILLIAM MORTEYN, and died ſans iſſue.

2. MAZERA, the ſecond daughter, was married to RALPH CROMWELL.

   JOHANNE, the daughter and heir to MAZERA, was married to ſir ALEXANDER FREVILLE, who in her right was lord and baron of Tamworth, and had iſſue.

3. MAUDE, the third daughter, was married to RALPH BOTTELER.

   RALPH BOTTELER.

4. JOHANNE, the youngeſt daughter, was married to THOMAS LUDLOW.

   THOMAS LUDLOW.

   MARGARET, was married to JOHN DYMOCKE, and had iſſue.

The

The barony of Carleton in the county of York, in the days of king EDWARD the first.

Sir JOHN BELLEW, lord and baron of Carleton in Balne.

1 SIBILL, the eldeſt daughter, was married to ſir MILES STAPLETON.

Sir NICHOLAS STAPLETON, lord of Carleton in Balne, in the right of his mother.

2 JOHANNE, the youngeſt daughter, was married to AUCHER FITZ HENRY.

HENRY FITZ AUCHER.

AUCHER FITZ HENRY.

The barony of Staveley in the county of Derby, in the days of king EDWARD the firſt.

Sir RALPH MUSARD, lord and baron of Staveley.

Sir RALPH MUSARD, eldeſt ſon, baron of Staveley after his father.

Sir JOHN MUSARD, baron of Staveley, died ſans iſſue.

Sir NICHOLAS MUSARD, baron of Staveley after his nephew, and died ſans iſſue.

1 AMICIA, the eldeſt ſiſter, was married to AUCHER FRETCHVILLE.

Sit RALPH FRETCHVILLE, lord and baron of Staveley in the right of his mother, had iſſue.

2 MARGARET, the ſecond daughter.

3 ISABELL, third daughter, married and had iſſue.

JOHANNE, wife to JOHN SHELASTON, and had iſſue.

The barony of Buckenham in the county of Norfolk, in the days of king EDWARD the ſecond.

Sir ROBERT of Tatſhall, baron of Buckenham.

Sir ROBERT of Tatſhall, baron of Buckenham.

Sir ROBERT of Tatſhall, baron of Buckenham, died ſans iſſue.

1 ERMNE, the eldeſt ſiſter, was married to ſir OSBERT CAYLY.

Sir THOMAS CAYLY, baron of Buckenham in the right of his mother.

MARY, wife to ſir ROGER CLIFFORD, of whom KNYVET of Buckenham is deſcended.

2 JOHANNE, the ſecond daughter, was married to ſir ROBERT DRIBY.

ALICE, wife to ſir WILLIAM BERNAKE.

Sir JOHN BERNAKE,

3 ISABELL, the third daughter, was married to ſir JOHN ORBY.

Sir PHILIP ORBY.

Sir JOHN ORBY.

The barony of Eresby in Lincolnſhire, in the days of king EDWARD the ſecond.

Sir JOHN BEKE, lord and baron of Ereſby.

1. ALICE, the eldeſt daughter, was married to ſir ROBERT of Willoughby.
   - Sir JOHN of Willoughby, lord and baron of Ereſby in the right of his mother, married and had iſſue.
2. MARGARET, the younger daughter, was married to RICHARD HARECOURT.
   - JOHN HARECOURT.
     - WILLIAM HARECOURT.

The barony of Markſtoke in the county of Warwick, in the days of king EDWARD the ſecond.

Sir WILLIAM of Odingſoles, lord and baron of Markſtoke.

1. IDA, the eldeſt daughter, was married to JOHN DE CLINTON.
   - Sir JOHN of Clynton, lord and baron of Markſtoke in the right of his mother, had iſſue.
2. MARGARET, the ſecond daughter, was married to JOHN, lord Grey of Rotherfield.
   - JOHN, lord Grey of Rotherfield.
3. ELA, the third daughter, was married to Bermingham.
4. ALICE, the fourth daughter, was married to THOMAS CAUNTON.

The barony of Webbeley in the county of Hereford, in the days of king EDWARD the ſecond.

Sir THEOBALD VERDUN, lord and baron of Webbeley.

1. JOHANNE, the eldeſt daughter, married to ſir THOMAS FURNIVALL* the younger, who in her right was baron of Webbeley.
2. ELIZABETH, the ſecond daughter, was married to ſir BARTHOLOMEW of Berghershe, and had iſſue.
3. MARGARET, the third daughter, was married to ſir JOHN CROPHULL, and had iſſue.
4. ELIZABETH, the youngeſt daughter, was married to HENRY lord Ferrers of Groby.
   - WILLIAM, lord Ferrers of Groby.
     - HENRY, lord Ferrers of Groby.

* This ſir THOMAS FURNIVALL, the younger, ſate in parliament and had place as baron of Webbeley, the elder ſir THOMAS FURNIVALL his father, lord of Sheffield, being yet living, as may appear by ſundry ſummons to parliament.

The barony of Dudley in Staffordſhire, in the days of king EDWARD the ſecond.

Sir ROGER of Somerey, baron of Dudley.

Sir JOHN SOMEREY, lord Dudley, died ſans iſſue.	MARGARET, the eldeſt daughter, was married to ſir JOHN SUTTON.	JOAN, the ſecond daughter, was married to ſir THOMAS BUTTETOURT.
	Sir JOHN SUTTON, lord and baron of Dudley in the right of his mother.	Sir JOHN BUTTETOURT, lord of Welegh.

The barony of Caſtle-Richard in the county of Salop, in the days of king EDWARD the ſecond.

Sir HUGH MORTEMER, lord and baron of Caſtle-Richard.

JOHANNE, the eldeſt daughter, was married to ſir RICHARD TALBOT, knight, who in her right was lord of Caſtell-Richard, had iſſue.	MARGARET, the younger daughter, was married to ſir GEOFFREY CORNWALL.
	Sir RICHARD CORNWALL of Burford.

The barony of Baſynge in Hampſhire, in the days of king EDWARD the third.

Sir HUGH St. JOHN, lord and baron of Baſynge.

Sir EDMUND, lord St. John of Baſynge, died ſans iſſue.	MARGARET, the eldeſt ſiſter, was married to ſir JOHN of Gaunt Philbert, who in her right was lord of Baſynge.	ISABEL, the younger ſiſter, was married to ſir LUCAS POININGS, who was alſo lord of Baſynge after the death of his wife's ſiſter.
	JOHN of St. Philbert, who died young, ſans iſſue.	Sir THOMAS POININGS, lord St. John of Baſynge.
		Sir HUGH POININGS, had iſſue.

The barony of Swynburne in Northumberland, in the days of king EDWARD the third

Sir ADAM of Swynburne, knight, lord Swynburne.

	1	2	3
Sir ADAM, lord Swynburne, died without iſſue.	BARNABA, the eldeſt ſiſter, was married to ſir JOHN STRYVELIN, who in her right was lord of Swynburne.	CHRISTIAN, the ſecond daughter, was married to WIDERINGTON.	ELIZABETH, the third ſiſter, was married to HERON.
		GERARD of Widerington.	WILLIAM HERON.

The barony of Folkingham in Lincolnſhire, in the days of king EDWARD the third.

Sir GILBERT of Gaunt, lord of Folkingham.

	1	2	3
*Sir GILBERT of Gaunt, lord of Folkingham, died ſans iſſue.	MARGARET, the eldeſt ſiſter, was married to WILLIAM of Kerdeſton.	NICHOLAA, the ſecond ſiſter, was married to ſir PETER MAULEY of Mulgrave.	JULIAN, the third ſiſter.
	Sir ROGER of Kerdeſton, a lord and baron in parliament in the right of his mother.	Sir PETER MAULEY, lord of Mulgrave.	
		Sir PETER MAULEY, lord of Mulgrave.	

* This ſir GILBERT of Gaunt, that left no iſſue, gave away all his lands and caſtles to king EDWARD the third and to his heirs for ever. Howbeit ſir ROGER of Kerdeſton, his nephew, ſon of his eldeſt ſiſter MARGARET, was advanced to the ſtate and degree of a baron in the right of the ſaid MARGARET his mother.

The barony of Bedale in Richmondſhire, in the days of king EDWARD the third.

Sir BRIAN FITZ-ALANE, lord and baron of Bedale.

	1	2
	AGNES, the eldeſt daughter, was married to GILBERT STAPLETON.	CATHERINE, the youngeſt daughter, was married to JOHN, lord Grey of Rotherfield.
	Sir MILES STAPLETON, was lord and baron of Bedale in the right of his mother.	Sir JOHN, lord Grey of Rotherfield.
		JOHANNE, wife to JOHN, lord Deynecourt.

The

The barony of Thwenge in Yorkſhire, in the days of king RICHARD the ſecond.

Sir MARMADUKE, lord Thwenge of Kylton Caſtell.

	1	2	3
THOMAS, lord Thwenge, died ſans iſſue *anno* 7 RIC. II.	LUCY, the eldeſt ſiſter, was married to ſir ROBERT LUMLEY, knight.	MARGARET, the ſecond ſiſter, was married to ſir ROBERT HILTON of Gwyne, knight.	CATHERINE, the third ſiſter, was married to ſir RAULPH DAUBENEY, knight.
	Sir MARMADUKE LUMLEY, knight.	MAUD, wife to JOHN HOTHOM, knight.	ELIZABETH, wife to ſir WILLIAM BOTREAUX.
	Sir RAULPH LUMLEY, knight, lord Lumley of Kilton Caſtell in the right of his grandmother, preſently after the death of THOMAS, lord Thwenge of Kilton.	Sir JOHN HOTHOM, knight.	

The barony of Awdeley of Helegh in the county of Stafford, in the days of king RICHARD the ſecond.

Sir JAMES, lord Awdeley of Helegh.

	1	2	3
Sir NICHOLAS, lord Awdeley of Helegh, died ſans iſſue, *anno* 15 RIC. II.	JOAN, the eldeſt ſiſter, was married to ſir JOHN TOUCHET.	MARGARET, the ſecond ſiſter, was married to ſir ROGER HILARY.	MARGARET, the youngeſt ſiſter, was married to ſir FOULK FITZWARYNE.
	Sir JOHN TOUCHET.		Sir FOULK FITZWARYNE.
	Sir JOHN TOUCHET, lord Awdeley of Helegh in the right of his grandmother.		Sir FOULK FITZWARYNE.

The barony of Wydehay in Berkſhire, in the days of king HENRY the fourth.

Sir ALMARIKE of St. Amand, lord St. Amand of Wydehay.

	1	2
	IDA, that was married to ſir THOMAS WEST, knight, who in her right was lord St. Amand of Wydehay, and after died ſans iſſue, *anno* 4 HEN. V.	ELEANOR, was married to ſir GERARD BRAYBROKE, knight.
		GERARD BRAYBROKE, eſq;
	1	2 3
	ELIZABETH, eldeſt daughter, was married to ſir WILLIAM BEAUCHAMP, who in her right was lord St. Amand of Wydehay, and had iſſue.	MAUDE, the ſecond daughter, was married to JOHN BABINGTON. ELEANOR, the third daughter.

The barony of Veſcy in Northumberland, in the days of king HENRY the firſt.

Sir WILLIAM of Atton, lord Veſcy.

1. ANASTACE, the eldeſt daughter, was married to EDWARD St. JOHN.
   - MARGARET, daughter and heir, married to ſir THOMAS BROMFLETE.
     - Sir HENRY BROMFLETE, lord Veſcy in the right of his grandmother, had iſſue.

2. ELIZABETH, the 2d daughter, was married to ſir JOHN COIGNERS.
   - ROBERT COIGNERS.
     - WILLIAM COIGNERS of Cokeburne.

3. CATHERINE, the third daughter, was married to ſir RALPH EURE.
   - Sir WILLIAM EURE, knight.
     - Sir RALPH EURE.

The barony of Powys in Wales, in the days of HENRY the ſixth.

Sir EDWARD CHARLETON lord Powis.

1. JOAN, the eldeſt daughter, was married to ſir JOHN GREY, knight.
   - Sir HENRY GREY, knight, lord Powys in the right of his mother.
     - RICHARD, lord Powys.
       - JOHN, lord Powys.
         - JOHN, lord Powys.
           - EDWARD, lord Powys, died without lawful iſſue.
       - ELIZABETH, wife to ſir JOHN LUDLOW.
         - ANNE, wife to THOMAS VERNON of Stokeſay, eſq;
           - THOMAS VERNON of Stokeſay, eſq;
             - HENRY VERNON of Stokeſay, eſq; couſin and next heir to EDWARD, lord Powys.

2. JOYSE, the ſecond daughter, was married to JOHN, lord Tiptoſte.
   - Sir JOHN lord Tiptoſte, earl of Worceſter.
     - EDWARD, earl of Worceſter, died ſans iſſue.
   - 1. PHILIPPA lady Roos, and JOHANNA wife to ſir ROBERT INGOLDESTHORPE.
   - 3. JOYSE, wife to ſir EDMUND SUTTON, ſon and heir of JOHN, lord Dudley.
     - EDWARD, lord Dudley.
       - JOHN, lord Dudley.
         - EDWARD, lord Dudley

DUGDALE in his baronage, Vol. III. p. 284. gives the following account of EDWARD, lord Powys.

EDWARD GREY, lord Powys, made his teſtament 11 Junij 36 HEN. VIII. whereby he ſettled the ſucceſſion of his whole barony and lordſhip of Powys, with his caſtle and manor of Poole, and divers other lordſhips, in the county of Montgomery; as alſo his caſtles and manors of Charleton and Pontysbury in com. Salop, upon the heirs of his own body lawfully begotten or to be begotten; and for lack of ſuch iſſue, his ſaid caſtle and manor of Charleton, and manor of Pontysbury, upon JANE ORWELL, daughter of ſir LEWIS ORWELL, knight, and her aſſigns, during her natural life; and in caſe he ſhould die without any iſſue of his own body lawfully begotten, that then EDWARD GREY, his illegitimate ſon by the ſame JANE ORWELL, ſhould have and enjoy his ſaid barony and manor of Powys, his caſtle and manor of Poole, and all other his lordſhips in the county of Montgomery; and the reverſion and inheritance of the caſtle and manors of Charleton and Pontysbury, to him and the heirs of his body lawfully begotten; and for lack of ſuch iſſue, to remain to that child, in caſe it ſhould be a ſon, wherewith the ſame JANE ORWELL was then great by him, and to the heirs of his body lawfully begotten: but if it ſhould not be a ſon, or if a ſon die without iſſue, then that the whole barony of Powys, and all the premiſſes beforementioned, ſhould come to JANE GREY his daughter, and to the heirs of her body lawfully begotten; and for lack of ſuch iſſue, to ANNE GREY, his other daughter, and the heirs of her body lawfully begotten; and for default of ſuch iſſue, to ſuch woman child, as ſhould be born of the body of the ſaid JANE ORWELL.

This EDWARD married ANNE, one of the daughters and coheirs of CHARLES BRANDON, duke of Suffolk, but by her had no iſſue.

NUMB. II.

In March 1731-2. the late JOHN KYNASTON, eſq; laid claim to this barony of Powys, and publiſhed the following caſe.

The caſe of JOHN KYNASTON, of Hordley, in the county of Salop, eſq; lineal heir of EDWARD KYNASTON, of Hordley aforeſaid, eſq; next couſin in blood, and heir of EDWARD, the laſt lord Grey of Powys.

JOHN DE CHERLETON, chevalier, was ſummoned to parliament by writ 7 EDWARD II. whereby a barony in fee was created deſcendable to his heirs general, and he was conſtantly ſummoned to 27 EDWARD III. 1353. in which year he died, leaving iſſue JOHN.

This ſecond JOHN had ſummons to parliament, from 28 to 36 EDWARD III. ſucceſſively, by the name of JOHN DE CHERLETON, chevalier; but from that time to 47 EDWARD III. he had ſummons directed, JOHANNI DE CHARLETON DE POWES; (which words, *de Powes* or *Powys*, are in all the ſubſequent writs) and he died 48 EDWARD III. 1374, leaving iſſue JOHN.

This third JOHN had ſummons to parliament, from 6 RICHARD II. 1382, to 2 HENRY IV. and died 2 HENRY IV. 1400. without iſſue, leaving EDWARD, his brother and heir.

This EDWARD had ſummons to parliament, from 3 HENRY IV. to 8 HENRY V. and dying 9 HENRY V. 1421, left two daughters his heirs, *viz.* JOAN, 21 years old, who married ſir JOHN GREY, and JOYCE, 18 years old, who married JOHN lord Tiptoft; whereby the barony of Powys was in Abeyance, and ſo continued till the attainder of JOHN earl of Worceſter (ſon and heir of the ſaid JOYCE) in October 1470.

JOAN, the wife of ſir JOHN GREY, knight, had livery of her purparty of the CHARLETON eſtate, and reſpite of fealty is entered to her husband ſir JOHN

GREY (who was ſtiled earl of Tankerville) and by whom ſhe had iſſue HENRY DE POWES, who was alſo ſtiled earl of Tankerville.

This HENRY died 28 HENRY VI. 1449. leaving iſſue RICHARD, his ſon and heir, 14 years old, and alſo a daughter, ELIZABETH, who married to ſir ROGER KYNASTON, 4th ſon of GRIFFIN KYNASTON, of Stocks com' Salop, eſq; from whom the petitioner is lineally deſcended.

RICHARD GREY lord Powes, Auguſt 4. 1465. by a latin deed, granted the reverſion of certain lands in com' Montgomery to the ſaid ROGER KYNASTON and ELIZABETH, by the name and deſcription, ROGERO KYNASTON, *ar'*, *& ELIZ' uxor' ejus & ſorori meæ*; and the ſaid RICHARD died 6 EDWARD IV. 1466. leaving iſſue JOHN his ſon and heir, who, at taking the inquiſition, was 6 years old.

The ſaid JOHN GREY, lord Powes, by a latin deed, dated June 24, 1483. reciting his father's ſaid deed of 1465, confirms the ſame lands in com. Montgomery to the ſaid ROGER (then ſir ROGER) KYNASTON, and ELIZABETH his wife.

By the attainder of JOHN TIPTOFT earl of Worceſter, 10 EDWARD IV. 1470. the barony of Powes was no longer in abeyance, the ſole right then being in the ſaid JOHN GREY, who was 10 years old, and was accordingly ſummoned to parliament the firſt year after he came of age, *viz.* 22 EDW. IV. 1482, by the title JOHANNIS GREY *de Powes*.

The ſaid JOHN was conſtantly ſummoned to all ſucceeding parliaments, to the time of his death, which happened 10 HENRY VII. 1494. leaving iſſue JOHN GREY, his ſon and heir.

This ſecond JOHN GREY died 19 HENRY VII. 1504 (aged 19 years) and left iſſue EDWARD, his ſon and heir, then a year old.

EDWARD GREY had ſummons to parliament, from 21 HENRY VIII. to 5 EDWARD VI. 1551, by the ſtile of *Dominus de Powes*, when he died without lawful iſſue, leaving EDWARD GREY, his illegitimate ſon by JANE ORWELL, and three illegitimate daughters by the ſame mother.

5 EDW. VI. 1551. By an Inquiſition taken at Montgomery, 5 EDWARD VI. 1551, after the death of EDWARD laſt lord Powes, it appears, "That EDWARD GREY lord Powes, in "his life ſuffered a recovery, and made a deed of feoffment, and made a will "and codicil; whereby, in default of lawful iſſue of his own body, he limited "the inheritance of his whole eſtate to EDWARD GREY, his baſtard ſon by JANE "ORWELL, daughter of ſir LEWIS ORWELL, knight, and the other heirs of "his body, with remainders to his daughters by the ſaid JANE ORWELL, and "the heirs of their bodies, ſucceſſively, with remainders in fee to his own right "heirs." And the jury find, that the ſaid EDWARD GREY was his *conſanguineus & heres in remanen'* which, by a decree of the court of Wards, 27 ELIZABETH, hereafter mentioned, is explained to be *hæres factus*.

N. B. The ſurname of ELIZABETH, who married JOHN LUDLOW, does not appear.

About the year 1554, THOMAS VERNON, the ſon of ANNE and GEORGE VERNON, the ſon of ALICE, the two daughters of ELIZABETH ...., who married JOHN LUDLOW, pretending, that the ſaid ELIZABETH .... was a daughter of RICHARD GREY lord Powes (who died 1466, and the petitioner inſiſts, left no ſuch daughter; but had a ſiſter ELIZABETH, under whom the petitioner claims, and one only child, his ſon JOHN, who was afterwards lord Powes) they the ſaid THOMAS and GEORGE VERNON, as the co-heirs of the ſaid ANNE and ALICE, coheirs of the ſaid ELIZABETH..... the pretended daughter of RICHARD lord Grey, were endeavouring to create evidence, by inquiſitions *poſt mortem* of the VERNONS, in a clandeſtine manner. Thereupon, EDWARD KYNASTON, eſq; (the grandſon and heir of ELIZABETH, the daughter of HENRY, and ſiſter of the ſaid RICHARD lord Grey) brought a bill in Chancery againſt the ſaid THOMAS and GEORGE VERNON, charging them with ſetting up a pretended title to be heirs of the ſaid

1 & 2 P. & M. 1554. EDWARD the laſt lord Powes, November 19, 1554. 1 and 2 PHILIP and MARY, examined witneſſes *in perpetuam rei memoriam*; two of which are mentioned to be an hundred years old, and upwards, and lived in the family with RICHARD

GREY

GREY lord Powes. The ſubſtance of whoſe depoſitions were, "That they well "knew RICHARD GREY lord Powes; that he had a ſiſter, named ELIZABETH, "who married ſir ROGER KYNASTON; that he had a ſon, named JOHN, but "never had a daughter, named ELIZABETH, nor any other lawful iſſue, but only "the ſaid JOHN. That his wife had two daughters, by a former husband, "named VAUGHAN, who lived in the houſe with the ſaid RICHARD lord Grey.— "Other of the witneſſes ſwear, that EDWARD GREY, the laſt lord Powes, never "reputed the VERNONS to be of kin to him, but always denied they were; "and at the ſame time acknowledged the KYNASTONS. RICHARD LAWLEY, eſq; "ſaith, that he was in company with THOMAS VERNON, one of the defendants, "at his own houſe, when VERNON ſaid, he would go and ſee the lord Powes, "if he knew he ſhould be welcome, ſaying, he was his kinſman. That Mr. "LAWLEY, being ſoon after at lord Powes's, mentioned what VERNON had "declared; at which lord Powes anſwered, that VERNON, or any other gentle- "man of the ſhire, ſhould be welcome to him; but as to any kindred, he ut- "terly denied it." This evidence is confirmed by ſeveral witneſſes.

By an inquiſition *poſt mortem* EDWARDI GREY, *milit', dom' Powys, capt' apud Llanvilling**, *in com' Montgomery*, 3 and 4 PHILIP and MARY 1556. the recoveries, deed of feoffment, will and codicil, were found, as in the inquiſition at Montgomery in 1551. And in this inquiſition the jury further found, "That "the ſaid EDWARD GREY lord Powes, died 2d day of July, 5 EDWARD VI. "and that EDWARD KYNASTON, eſq; was his couſin and next heir." And then find the pedigree of EDWARD KYNASTON, in order to ſhew how he was heir, *viz.* "That the ſaid EDWARD KYNASTON was ſon to HUMPHRY KYNASTON, the "ſon of ELIZABETH KYNASTON, the daughter of HENRY GREY, earl of Tan- "kerville, and lord Powys, father of RICHARD GREY, knight, lord Powys, fa- "ther of JOHN GREY, knight, lord Powes, father of JOHN GREY, knight, lord "Powes, who was father of the ſaid EDWARD GREY, lord Powys."

* *N. B.* EDWARD the laſt lord Powes died ſeized of the town of Llanvilling, which is part of Powes land, and adjoins to the ſeat of the lord of Powes.

N. B. The VERNONS cannot produce any records, deeds or writings of the time, to ſhew that RICHARD, lord Powes, had ſuch a daughter as ELIZABETH, and that ſhe married JOHN LUDLOW; but, by articles made in 1493. between ſir RICHARD LUDLOW and ſir HENRY VERNON, it appears, that ANNE and ALICE LUDLOW (daughters of JOHN LUDLOW, then deceaſed, and grand-daughters of the ſaid ſir RICHARD) married THOMAS and HUMPHRY VERNON, ſons of the ſaid ſir HENRY VERNON; which articles are ſet forth in the inquiſition *poſt mortem* of ſir RICHARD LUDLOW, without any mention whatſoever being made of the mothers of the ſaid ANNE and ALICE - - - - - and then four ſorts of proof are produced to ſupport this pretence, *viz.*

1. Three inquiſitions *poſt mortem.*
2. Three Verdicts in actions at law.
3. Enjoyment of part of the Powys eſtate, and
4. Printed books, heralds books, and pedigrees.

An inquiſition *poſt mortem* of GEORGE VERNON of Hodnet, taken at Drayton *ſubter Hales, com' Salop*, January 26. 1 and 2 PHILIP and MARY 1554. where the jury (after finding the paternal eſtates of GEORGE VERNON) add, that he was ſeiſed in fee of and in one moiety of the manor of Buyldwas, *&c.* as couſin, and one of the coheirs of EDWARD GREY lord Powes: But that he did not die ſo ſeized, becauſe JOHN HERBERT and †JOAN his wife, entered upon his poſſeſſion, and were ſeized thereof at the time of taking the inquiſition; but by what title they knew not. 26 Jan. 1 & 2 P. & M. 1554.

† *N. B.* This JOAN is ſuppoſed to be the ſame perſon called JANE ORWELL in the will of EDWARD the laſt lord Powes.

Upon a writ *teſte* March 1, 1 ELIZABETH 1558-9, an inquiſition *poſt mortem* of EDWARD lord Powes was taken, at the ſame place, Auguſt 14. following and in this the recoveries, deed of feoffment, and will of EDWARD lord Powys, are ſtated, as before-mentioned, *viz.* That he ſettled his eſtates on the ſaid

JANE ORWELL, for life, remainder to EDWARD GREY, his natural ſon by her, with remainder to his natural daughters; but, by this inquiſition, the jury find, that EDWARD lord Grey never had a ſon or daughter by the ſaid JANE ORWELL, that ſir LEWIS ORWELL never had any ſuch daughter as the ſaid JANE; and that there never were any ſuch perſons *in rerum natura* as JANE ORWELL and EDWARD GREY, the baſtard ſon of EDWARD lord Powes; and then find, that HENRY VERNON and RICHARD VERNON were his couſins, and right and next heirs, as deſcended from ELIZABETH, daughter of RICHARD lord Powys aforeſaid.

To this writ and inquiſition is annexed a ſuperſedeas, dated 11 *Auguſti* (which is three days before the inquiſition taken) iſſued *ad requiſitionem* JOHANNIS HERBERT *&* * JOAN *ux' ejus*, which vacates, and makes it of no effect.

* *N. B.* This is ſuppoſed to be the ſame JANE ORWELL.

Upon a writ *teſte* 19 April 3 ELIZABETH 1561, an inquiſition *poſt mortem* RICHARDI ſon and heir of GEORGE VERNON, was taken at Whitchurch, *com'* Salop, 3 Sept. 7 ELIZ. 1565, above 4 years after the *teſte* of the writ.—This inquiſition was the ſame as the laſt—but the jury find, likewiſe, that one EDWARD, ſon of JOAN KEMPE, pretending to be a ſon of EDWARD lord Powes by one JANE ORWELL, had intruded, and taken the profits of the lands, from the death of RICHARD VERNON to that time, and that the feoffment made by EDWARD lord Powes was forged ſince his death.

N. B. This was 14 years after his death.

It muſt be obſerved, in regard to theſe inquiſitions, that they were taken at places adjoining to the VERNONS eſtates, *viz.* at Drayton, about a mile from Hodnet, and far diſtant from the reſidence and eſtates of lords Powys; that the jury's finding in the firſt and third inquiſitions *poſt mortem* VERNONS exceeding the authority of the writ; and as to the ſecond *poſt mortem* of EDWARD GREY lord Powys, a ſuperſedeas iſſued *ad requiſitionem* JOHN HERBERT and JOAN his wife, and vacated it. But in Hillary Term 27 ELIZABETH 1585, in a cauſe in the court of Wards (*inter* VERNON *&* GREY, the baſtard) the court of Wards, by a ſolemn decree, reciting that the ſaid three inquiſitions had been traverſed, and, in due form avoided, declared all theſe inquiſitions inſufficient, giving this reaſon, with regard to the laſt *poſt mortem* of RICHARD VERNON. "That the matters therein contained, "concerning the premiſſes, were without authority or warrant of the "writ, which were only to enquire what lands remained or came "into the Queen's hands, by the death of RICHARD VERNON, from "GEORGE his father; and, in the ſame writ, contrariwiſe, the pre-"tended title to the lord Powys's lands, without good warrant, is "found and affirmed following the courſe in manner and matter of "the inquiſition taken at Drayton under Hales 14 *Auguſti*, 1 ELIZ. "1559." which was *poſt mortem* of EDWARD lord Powys, and ſuperſeded.

N. B. Before entering upon the VERNONS ſecond head of evidence (which may properly be ſaid to be founded on theſe inquiſitions) it is proper to obſerve, that the KYNASTONS enjoyed but a ſmall eſtate, and being ſatisfied, that the laſt lord Powes had legally ſettled his eſtates, acquieſced as heir at law; yet the baſtard GREY thought it more for his ſecurity to come to an agreement with Mr. KYNASTON, and thereupon, by deed dated 10 ELIZ. 1568, the baſtard (as ſoon as he came of age) conveyed to EDWARD KYNASTON the manors of Placydynas and Trewarn *in com'* Montgomery (of 500*l. per annum* value) in conſideration of the ſaid EDWARD KYNASTON'S aſſigning over to the baſtard all his right, as heir at law, to the ſaid EDWARD lord Grey, to his other eſtates; and the ſaid manors of Placydynas and Trewarn continue in Mr. KYNASTON to this time.

The ſecond head of evidence, on the part of the VERNONS, is upon verdicts, pretended to be obtained upon actions at law; the firſt of which is 20 years after the death of the late lord Powys.

An

An ejectment brought *Paſche* 13 ELIZABETH 1571, for the manor of Pontisbury, and ſome parcels of land; and on *not guilty* pleaded, a general verdict was found for the plaintiff, as to the ſcite of the manor, and ſome particular parcels of land mentioned in the declaration; but it does not appear upon what title, nor what lands, particularly, and ſuch verdict is not evidence againſt Mr. KYNASTON.

Paſche 13 ELIZ. 1571. *Inter* NETHWAY & GRAY & HIGGONS, in Bo. Rs. on the demiſe of HENRY and JOHN VERNON.

The ſecond verdict was 4 years afterwards, in replevine for cattle taken at Brocton in *com' Stafford*; the defendants acknowledge the taking of the cattle, as bailiffs of HENRY and JOHN VERNON; the pleadings in the cauſe ſet forth the deſcent of the VERNONS and Mr. EDWARD KYNASTON's (as ſtated in the pedigree) and the iſſue is, whether the premiſſes in queſtion deſcended to THOMAS and GEORGE VERNON, as couſins and co-heirs of EDWARD GREY lord Powys, and the jury find for the VERNONS.

Michaelmas 17 & 18 ELIZ. 1575. MORETON & CLAYTON in C. B.

The third verdict is (15 years after the ſecond, and 40 years after the death of the laſt lord Powes) in replevine for taking plaintiff's cattle at Andover in *com' Southampton*——The defendants acknowledge the taking, as bailiffs of EDWARD KYNASTON, for 25 *l.* fee farm rent, iſſuing out of the manor of Andover, and aver it became due to EDWARD KYNASTON, upon the death of EDWARD lord Powes. HINXMAN, the plaintiff, in bar, alledges, that RICHARD lord Powes had a daughter (as ſtated in the pedigree) and the rent deſcended to THOMAS and GEORGE VERNON, as couſins and coheirs of EDWARD lord Powes; and the iſſue, upon the whole was, whether RICHARD lord Powes had iſſue of his body the ſaid ELIZABETH GREY. Upon this fact the cauſe came to be tried, when the inqueſt was taken by default, and the jury find, that RICHARD lord Powes had iſſue of his body ELIZABETH GREY.

Hill. 32 ELIZ. 1590. *com' Banco inter* HINXMAN & HALLIWELL.

Obſervations on theſe verdicts.

'Tis apprehended theſe verdicts will not affect Mr. KYNASTON, and the two firſt plainly will not, as the ſaid EDWARD KYNASTON, nor any perſon under whom he claims, are not made parties to the ſuits; and as ſuch, the verdicts ought to be conſidered, as *res inter alios acta*, and he cannot be affected by them; but in regard to the third, it appears, upon the face of the judgment, to be by default; and the pleadings carry in them evident ſigns of colluſion, and ſeem to be drawn by the ſame hand. For Mr. KYNASTON's bailiff, (as he was called) avoids advantages, and takes upon himſelf difficulties, which is inconſiſtent with the rules of pleading; and the colluſion appears the more ſtrong, when it is conſidered, firſt, that EDWARD KYNASTON had conveyed to the baſtard all his intereſt in the Powys eſtate, above 20 years before; ſecondly, that any one might make uſe of his name; and thirdly, that he could not poſſibly gain by the event of this ſuit.

The third head of the evidence of the VERNONS is, the enjoyment of part of the Powys eſtate. It is inſiſted on, that EDWARD lord Powes was entitled to the Andover rent of 25 *l. per annum* by deſcent from his anceſtors; and that HENRY VERNON enjoyed it, and ſir NATHANIEL CURZON ſtill enjoys it. That Ironbrooke Grainge was part of the poſſeſſion of Buyldwas monaſtery, and was granted to EDWARD lord Powys, by HENRY VIII. and it appears, that ſir NATHANIEL CURZON ſtill enjoys that.

In anſwer to the Andover rent, king EDWARD II. granted a fee farm rent of 100 *l. per annum* iſſuing out of Andover to EDMUND of Woodſtock, which afterwards was divided among four co-heireſſes, and enjoyed by the BOLTONS, NEVILLS, SALISBURIES and RUTLANDS; and probably, the VERNONS may claim, by purchaſe or otherwiſe, from ſome of theſe.——It is admitted, that JOHN, the father of EDWARD, died ſeized of 25 *l. per ann.* part of the 100 *l.* and that it deſcended to EDWARD; but it doth not appear, that he received the rent for

20 years before he died, nor is there any inquiſition taken after his death, to ſhew that he died ſeized of it, which was always taken at the death of his predeceſſors; and for 20 years after his death, it doth not appear who received this rent; but in 1573, there's a receipt given for 25 *l.* part of this rent, by HENRY and JOHN VERNON, where they ſtile themſelves couſins and co-heirs of EDMUND of Woodſtock; and from that time the rent hath continued in the family——But what is moſt remarkable, touching this rent, is, that it appears, by an inquiſition *poſt mortem* of HENRY VERNON, 8 April, 5 JAC. I. 1607, whereby it was found, that HENRY VERNON died ſeized of this rent in fee tail, *viz.* to him and the heirs of the body of THOMAS VERNON, his grandfather, who married ANNE, daughter of JOHN LUDLOW, but was, himſelf, no relation to the Powys family, and could not enjoy it as heir of EDWARD lord Powys, not only on that account, but becauſe the ſaid THOMAS VERNON, the grandfather, died ſome years before that lord.

As to Ironbrooke Grainge, 'tis evident, that the baſtard's right to this and the other eſtates that were part of Buyldwas monaſtery, was affirmed and eſtabliſhed by the decree of the court of Wards; ſo that the enjoyment of Ironbrooke Grainge by the VERNONS, muſt be founded on ſome purchaſe. For the eſtate of lord Powys that was Buyldwas monaſtery, was 5 or 6000 *l. per ann.* in Salop, and 'tis not pretended, that any other than this inconſiderable farm was enjoyed by the VERNONS.

The laſt head of evidence is, ancient printed books, herald books, and carts of pedigrees in the heralds office, *viz.*

1. A manuſcript book in the heralds office, dated 21 Sept. 1623.

2. Another entitled, PHILPOTT's *Stemmata Delineata*, without date.

In the firſt there's an entry made of the pedigree of the GREYS, wherein mention is made of ELIZABETH, daughter of RICHARD lord Powys, who intermarried with ſir JOHN LUDLOW, *&c.*——In the other there's a pedigree of the LUDLOWS, where the like is mentioned.

3. Another manuſcript book, in the heralds office, and underſtood to be GLOVER's hand writing (who was Somerſet herald in queen ELIZABETH's reign) in which is entered a pedigree of the family of the VERNONS; and as the wife of JOHN LUDLOW is entered ELIZA *filia* RICHARDI GREY *baronis Powiſiæ conſanguinea & hæres* EDWARDI GRAY *ult' baronis Powiſiæ*, and, as daughters of her, are entered ANNE married to THOMAS VERNON, and ALICE to HUMPHRY VERNON.

The laſt book (G. 15 Salop) a viſitation book, Salop 1584, page 61, has a pedigree of the LUDLOWS; and in one circle is entered JOHN LUDLOW of Stokeſay, *com' Salop*, eſq; and in the circle adjoining is entered ELIZABETH, daughter of RICHARD GREY lord Powys; but theſe laſt words are of a different hand and ink from the reſt of the pedigree, and were not the original entry in that circle, but the firſt words were, D. of ROBERT CORBET, knight, which are croſſed out——In page 241 is entered a rough ſketch of part of a pedigree of the family of the LUDLOWS, and in which there are theſe words: "JOHN LUD-"LOW, who had iſſue by the lord Powys's daughter, as was ſaid, JOHN LUDLOW, "ANNE and ALICE."——and in page 210 another rough ſketch of a pedigree of RICHARD lord Powys, in which ELIZABETH, married to JOHN LUDLOW, is mentioned, as his daughter; and ANNE, married to THOMAS VERNON, as a daughter of ELIZABETH; but under it is this memorandum in another ink—— "But this was ſet down by Mr. HORDS, counſellor to Mr. VERNON of Stoke-"ſay, for the long debated barony of Powys."

There's none of the old heralds books that make any mention of this daughter ELIZABETH, and the firſt viſitation book in 1584, wherein mention is made of her, is above 118 years after the death of RICHARD lord Powys, her ſuppoſed father; but thoſe being all ſubſequent to the inquiſitions, &c. 'tis hoped, they will not have the leaſt weight, and therefore paſs unobſerved.

HENRY

HENRY VERNON petitioned queen ELIZABETH, ſetting forth his claim to the barony of Powys; the matter was referred to lord treaſurer BURLEIGH, maſter of the court of Wards, and the earl of Leiceſter, deputy earl marſhal, under the earl of Shrewsbury. Thoſe two lords join in a letter, dated September 22. 1584, to COOK Clarencieux (Garter being then vacant) and GLOVER, Somerſet herald, requiring them to examine into the proof of Mr. VERNON's claim, and to certify their opinion: and, by a report dated October 12. 1584, they certified, that they had examined into the deſcent of the Powys family, and after ſearching all the records and books of the office, they find, that none of the lords GREY of Powys had a daughter, except HENRY, who had a daughter, named ELIZABETH, married to ſir ROGER KYNASTON, from whom the KYNASTONS of Hordley are deſcended.

In the year 1584. (which is the firſt notice taken of ELIZABETH in the heralds books.)

N. B. Copies of theſe letters are preſerved in the heralds office, in a book given to them by ſir EDWARD WALKER, who was made Garter by king CHARLES I. and are ſuppoſed to be GLOVER's own hand writing.

Mr. EDWARD KYNASTON, the petitioner's anceſtor, was not poſſeſſed of a large eſtate, to enable him to contend with ſuch powerful perſons as the baſtard GREY and the VERNONS, who, by marrying into lord Shrewsbury and Eſſex's family, had great alliances; but choſe rather to enjoy his ſmall eſtate in peace; and therefore he only brought his bill in chancery, and examined his witneſſes, to ſupport his pedigree, and then he came to an agreement with the baſtard, and had a conſiderable eſtate (at that time) given him by the baſtard, which put him out of the caſe in diſpute; and he was not any ways intereſted in their ſuits, in reſpect to the Powys eſtates.

It doth not appear, that the VERNONS, by any of their diſputes, enjoyed any part of the lord Powys's eſtate (except the 25 *l. per ann.* from Andover, and Ironbrooke Grainge in Derbyſhire.)

As to the 25 *l.* Andover rent, it is demonſtrable, from the inquiſition *poſt mortem* of HENRY VERNON, that he died poſſeſſed of this rent *ut de feodo talliato* from his grandfather THOMAS VERNON; which THOMAS died long before EDWARD lord Powys, or JOHN, his father; ſo that this, as well as Ironbrooke Grainge (in the CURZON's neighbourhood) might be probably purchaſed.

The three inquiſitions gained in the manner before mentioned, gives occaſion for ſtrong ſuſpicions, that they were intended only to create evidence; and upon them the VERNONS laid the foundation of their diſputes, the whole ſeeming to be aimed more at the honour, than the eſtate.——The heralds books, tho' 118 years after the uſual entries, are altered, and interpolations made to ſerve the purpoſe; whereas Mr. KYNASTON's family hath his marriage regularly entered in the heralds book, according to the time; and tho' the name of JOHN LUDLOW is entered in the books of the time, yet a blank is left for his marriage; which, if it had been with ELIZABETH GREY, is the more remarkable, as the GREYS were one of the moſt conſiderable families of thoſe days.

It may be objected to the petitioner's title, its having lain ſo long dormant, and no ſteps having been taken, ſince the depoſitions *in perpetuam rei memoriam*; but it is anſwered, that ſir ROGER KYNASTON was a fourth brother, and, tho' a great man in the field, yet did not acquire any great fortune; and, till the petitioner's father's marriage, there was only a ſmall eſtate in the family, and, conſequently, not capable of ſupporting the dignity.

Upon the whole, 'tis humbly hoped, that the petitioner will have his right declared to the barony in queſtion.

The

The pedigree of JOHN KYNASTON, esq;

Sir JOHN CHARLETON, summoned to parliament 7 EDW. II. *obiit* 27 EDW. III. 1353.

Sir JOHN, his son and heir, summoned by the title of Sir JOHN CHARLETON de Powes, & *obijt* 48 EDW. III.

1 JOHN, his eldest son, *obijt* 2 HEN. IV. without issue.

2 EDWARD, brother and heir to JOHN, *ob.* 9 HEN. V. leaving two daughters, 1421.

1 Sir JOHN GRAY, stiled earl of Tankerville, *obijt* 9 HEN. V. 1421.

1 JOAN, the eldest, married to sir JOHN GREY, earl of Tankerville.

2 JOYCE, married to JOHN lord Tiptoft, and had issue JOHN, created earl of Worcester, who was afterwards attainted of treason, 10 EDW. IV. 1470. whereby the abeyance ceased.

HENRY GRAY, stiled earl of Tankerville and lord Powys, *obiit* 28 HEN. VI. leaving one son and one daughter.

* RICHARD GRAY lord Powys, son and heir of HENRY, *ob.* 6 EDW. IV. 1466.

ELIZABETH, married to sir ROGER KYNASTON, knight.

Sir ROGER KYNASTON, knight.

JOHN GRAY, summoned to parliament 22 EDW. IV. 1482, being 22 years old, & *obiit* 10 HEN. VII. 1494.

JOHN, son and heir *obijt* 19 HEN. VII. 1504. aged 19, leaving EDWARD one year old.

Sir EDWARD GRAY, *obijt*, 5 EDW. VI. 1551. without lawful issue, and left his estate to his natural children.

HUMPHREY KYNASTON.

EDWARD KYNASTON.

ROGER KYNASTON.

EDWARD KYNASTON.

ROGER KYNASTON.

EDWARD KYNASTON.

JOHN KYNASTON, the petitioner.

* 'Tis pretended that RICHARD GRAY lord Powys, left a daughter ELIZABETH, who married JOHN LUDLOW, and had issue ANNE and ALICE, who married THOMAS and HUMPHREY VERNON, and that this barony is in suspence, and state their pedigree as follows, *viz.*

ELIZABETH____JOHN LUDLOW.

1 ANNE LUDLOW.__THOMAS VERNON.

2 ALICE LUDLOW.__HUMPHREY VERNON

THOMAS VERNON.

ELIANOR VERNON.__FRANCIS CURZON, esq;

GEORGE VERNON.

HENRY VERNON, *obijt sine prole.*

From this branch sir NATHANIEL CURZON is descended, and claims as one of the coheirs.

RICHARD VERNON.

From this branch there are several VERNONS of Hodnet.

At

At this time ſir NATHANIEL CURZON, baronet, oppoſed Mr. KYNASTON's claim, as appears by the following caſe.

NUMB. III.

The caſe of ſir NATHANIEL CURZON, baronet, in relation to the barony of Powis.

THE barony of Powis is a barony in fee, deſcendable to the heirs general, and was created in the 7th year of EDWARD II, by writ of ſummons directed to JOHN DE CHARLETON.

From JOHN DE CHARLETON the ſaid barony deſcended to his heirs in ſucceſſion, *viz.* to ſir JOHN CHARLETON his ſon and heir; and after his deceaſe, to his two ſons, JOHN and EDWARD ſucceſſively; which EDWARD dying without male iſſue, left two daughters, JOHAN and JOYCE, whereby the barony became in ſuſpence, and the crown did afterwards by its prerogative reduce it to a certainty, by granting a ſummons by the antient title, to the deſcendants of JOHAN, the eldeſt daughter, wife of ſir JOHN GREY, knight, earl of Tankerville, who had iſſue HENRY, his ſon and heir; which HENRY dying 28 HEN. VI. left iſſue one ſon, named RICHARD, and one daughter, named ELIZABETH, who married ROGER KYNASTON, eſq; The ſaid RICHARD lord Powis dying the 6th of EDW. IV. left iſſue one ſon, named JOHN, and one daughter, named ELIZABETH, who was married to JOHN LUDLOW, ſon and heir of ſir RICHARD LUDLOW; the ſaid JOHN lord Powis dying the 10th of HENRY VII. left iſſue JOHN, who dying the 19th of HEN. VII. left iſſue EDWARD, the laſt lord Powis, who died the 5th of EDW. VI. without any iſſue of his body lawfully begotten.

ELIZABETH, the daughter of RICHARD lord Powis, had iſſue by the ſaid JOHN LUDLOW two daughters, ANNE and ALICE.

ANNE, the eldeſt, intermarried with THOMAS VERNON, eſq; one of the ſons of ſir HENRY VERNON, knight, and left iſſue only ELEANOR, who intermarried with FRANCIS CURZON, eſq; from whom the preſent ſir NATHANIEL CURZON is lineally deſcended.

ALICE, the younger daughter of the ſaid ELIZABETH, intermarried with HUMPHRY VERNON, the other ſon of the ſaid ſir HENRY VERNON, from whom DIANA VERNON and HARRIOTT VERNON, now living and unmarried, are lineally deſcended.

The ſaid ſir NATHANIEL CURZON, and the ſaid DIANA and HARRIOT VERNON, being thus deſcended from ELIZABETH, the daughter of RICHARD lord Powis, are now the coheirs to EDWARD the laſt lord Powis, and the ſaid barony is deſcended to them in fee; but as they are coparceners, the ſame muſt remain in abeyance, until his Majeſty ſhall be pleaſed to revive the ſame in one of the ſaid coheirs.

JOHN KYNASTON, eſq; hath notwithſtanding this, ſet up a claim to the ſaid barony, and petitioned his Majeſty for a writ of ſummons to parliament, by the title of baron of Powis; againſt which petition the ſaid ſir NATHANIEL CURZON entered his caveat, and his Majeſty referred the ſaid claim unto the conſideration of his Majeſty's attorney-general; who having made a ſpecial report upon the ſeveral matters that appeared to him, his Majeſty hath been pleaſed to refer the ſame unto the conſideration of the houſe of peers.

The ſaid JOHN KYNASTON endeavours to ſupport his claim, by inſiſting that RICHARD lord Powis never had a daughter; and that he, as deſcendant from ELIZABETH the ſiſter of RICHARD lord Powis, is now ſole heir at law to EDWARD, the laſt lord Powis.

The principal point in queſtion therefore is, whether RICHARD lord Powis had a daughter or not; for if RICHARD lord Powis had a daughter, there can be

no doubt but ſhe and her deſcendants muſt take in deſcent before his ſiſter and her deſcendants, and of conſequence the ſaid JOHN KYNASTON can have no right to the ſaid barony.

The claim of ſir NATHANIEL CURZON is ſupported,

Inquiſitions. Firſt, By ſeveral inquiſitions, *poſt mortem*, *viz.*

1 & 2 P. & M. *Poſt mortem* of GEORGE VERNON, eſq; by which it is found, that he in his life-time was ſeiſed in fee of a moiety of the manors of Byldwas and Pontsbury, and other lands therein mentioned, as couſin and one of the coheirs of EDWARD GREY, lord Powis, then lately deceaſed; and that he was the ſon and heir of ALICE VERNON, one of the daughters and coheirs of ELIZABETH LUDLOW, who was the daughter of RICHARD lord Powis, &c.

1 ELIZ. *Poſt mortem* of EDWARD lord Powis: By which it was found, that EDWARD lord Powis died without any lawful iſſue; and that HENRY VERNON and RICHARD VERNON, eſqs. were his next couſins and heir at law, *viz.* RICHARD the ſon of GEORGE VERNON, the ſon of ALICE; and HENRY, the ſon of THOMAS VERNON, the ſon of ANNE; and that the ſaid ANNE was one of the daughters, and the ſaid ALICE the other of the daughters, of ELIZABETH LUDLOW, the daughter of RICHARD lord Powis, *&c.* and that the lands after the death of the ſaid EDWARD lord Powis, remained unto the ſaid HENRY and RICHARD VERNON.

7 ELIZ. *Poſt mortem* of RICHARD VERNON, eſq; (ROGER KYNASTON being one of the jury) by which it was found, that EDWARD GREY, lord Powis, was ſeiſed of the manors of Charleton and Pontsbury, with divers other lands; and that after his death a moiety of the ſame deſcended to RICHARD VERNON, as one of the couſins and coheirs of EDWARD lord Powis; and his pedigree is found as in the laſt inquiſition, from ELIZABETH LUDLOW, the daughter of RICHARD lord Powis.

Secondly, By ſeveral verdicts at law, wherein the VERNONS, the deſcendants from ELIZABETH, daughter of RICHARD GREY lord Powis, are found to be intitled to divers lands and rents, which were part of the inheritance of EDWARD, the laſt lord Powis, as his next heirs, and particularly in ſeveral actions in replevin, *viz.*

Verdicts at law. 15 ELIZ. One brought 15 ELIZ. wherein the bailiff of HENRY and JOHN VERNON juſtify and maintain a diſtreſs on the lands, then late of the lord Powis, as the ſaid HENRY and JOHN VERNON were heirs at law to the ſaid lord Powis.

17 & 18 ELIZ. One other brought 17 and 18 ELIZ. in Michaelmas term, by ROBERT MORETON againſt WILLIAM CLAYTON and ROBERT PEATE; and the queſtion being, Whether the reverſion in certain lands (which were part of the diſſolved monaſtery of Byldwas in the county of Stafford, and belonged to EDWARD lord Powis) deſcended unto THOMAS VERNON and GEORGE VERNON, as his couſins and heir at law: It was for the greater ſolemnity tried at the bar of the common-pleas, by a jury of the county of Stafford, who found that the ſaid premiſſes did deſcend unto the ſaid THOMAS and GEORGE VERNON, as couſins and next heirs of EDWARD GREY, lord Powis.

22 & 23 ELIZ. One other brought 22 and 23 ELIZ. wherein the bailiff of HENRY and JOHN VERNON juſtify and maintain a diſtreſs made on the lands then late of the lord Powis, as the ſaid HENRY and JOHN VERNON were his heirs at law.

32 ELIZ. One other brought 32 ELIZ. in Hillary term, by WILLIAM HINXMAN, plaintiff, againſt RICHARD HALLYWELL, defendant; wherein the defendant juſtified taking the diſtreſs as bailiff of EDWARD KYNASTON, eſq; (the anceſtor of the preſent JOHN KYNASTON, eſq;) for part of a fee-farm rent iſſuing out of the manor of Andover; which he inſiſted was deſcended to the ſaid EDWARD KYNASTON, from EDWARD lord Powis, as his heir at law. The plaintiff inſiſted that THOMAS and GEORGE VERNON were couſins and heirs at law of EDWARD lord Powis, as deſcended from ELIZABETH the daughter of RICHARD lord Powis; and iſſue being joined on this ſingle fact, Whether RICHARD GREY, lord Powis, had iſſue ELIZABETH a daughter or not? the ſame was tried at the bar

bar of the court of common-pleas, when the jury found, that RICHARD GREY lord Powis, had iſſue of his body, lawfully begotten, a daughter named ELIZABETH; and judgment was given thereon for the plaintiff.

And alſo in ſeveral actions in ejectment wherein the VERNONS recovered divers parts of the eſtate of EDWARD lord Powis, as his heirs at law.

Thirdly, By the poſſeſſion and enjoyment which the ſaid VERNONS and their deſcendants have had of the manors, lands and rents which were the inheritance of EDWARD GREY, the laſt lord Powis; and more particularly the manor of Ironbrooke Grange in Derbyſhire, which was granted by king HENRY VIII. to EDWARD lord Powis, hath ever ſince his death been inherited by the VERNONS and their deſcendants, as heirs of the ſaid lord Powis; and ſir NATHANIEL CURZON is now in the poſſeſſion thereof, one moiety by deſcent from HENRY VERNON, one of the heirs, and the other moiety by conveyance from ſir ROBERT VERNON, the other heir. Poſſeſſion and enjoyment of lands, rents, &c.

EDWARD lord Powis was ſeized of the yearly rent, or portion, of 25 *l.* iſſuing out of the manor of Andover; and this rent hath, ſince his death, been paid unto the VERNONS and their deſcendants by moieties, as they were the coheirs of EDWARD the laſt lord Powis; and 12 *l.* 10 *s.* one moiety thereof hath been paid to the family of CURZON; and ſir NATHANIEL CURZON is now in receipt thereof. Andover rent.

Whereas on the other hand it doth not appear that the ſaid JOHN KYNASTON, or any of his anceſtors, ever were in poſſeſſion of any part of the eſtate of EDWARD the laſt lord Powis, or made any title or claim thereto as heir at law.

Fourthly, By antient chronicles and hiſtories, heralds books and antient pedigrees, wherein it appears that RICHARD lord GREY had a daughter named ELIZABETH, and that the VERNONS are deſcended from her in ſuch manner as is before mentioned; and likewiſe that ſir NATHANIEL CURZON is heir at law, by a lineal deſcent, unto ANNE the eldeſt daughter of ELIZABETH, the daughter of RICHARD lord Powis. CARADOCK's hiſt. of Wales, printed in 1584, fol. 218. STEBING's genealogical hiſt. fol. 319. Heralds viſitation Salop.

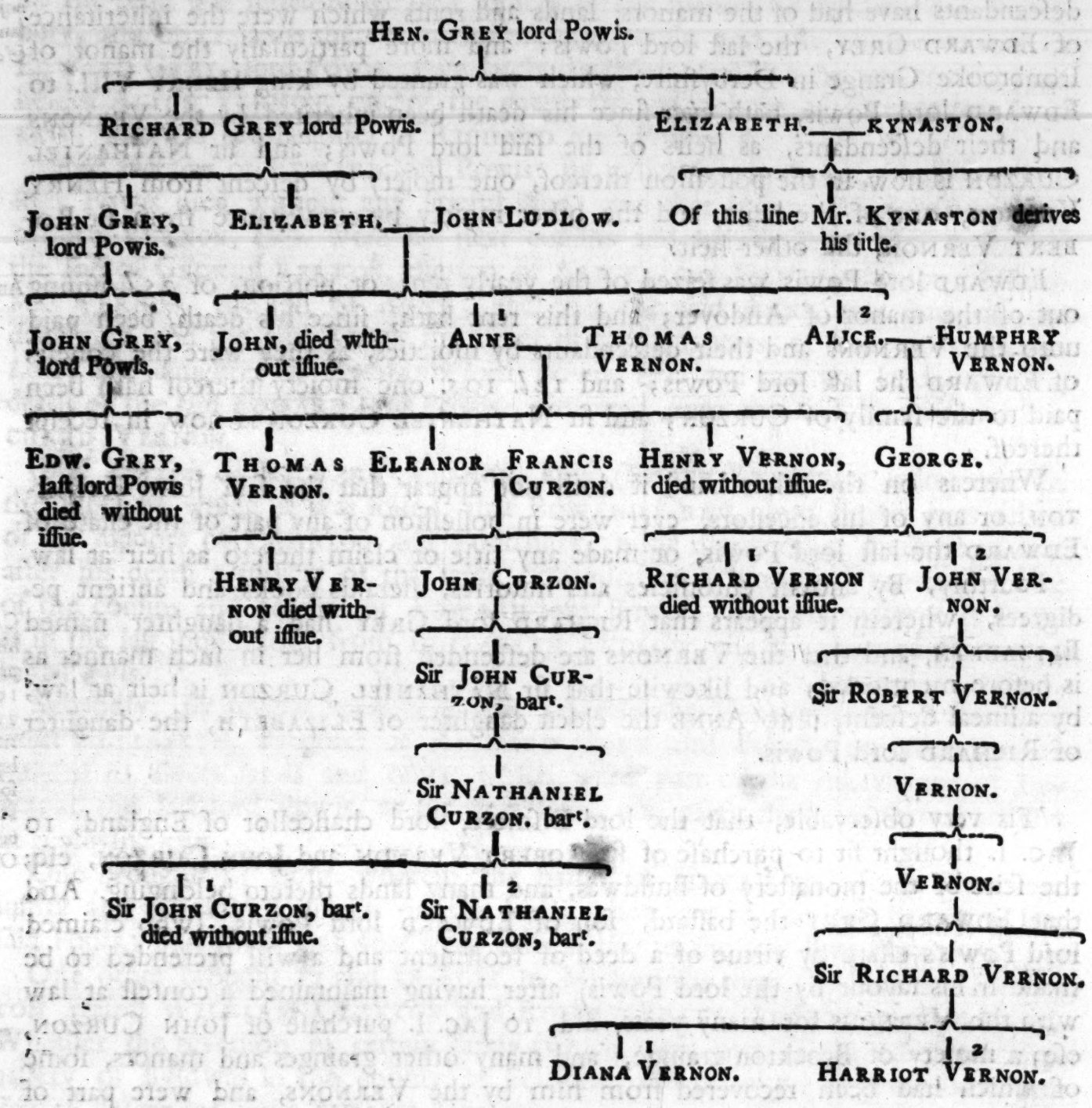
'Tis very obſervable, that the lord Elſmere, lord chancellor of England, 10 JAC. I. thought fit to purchaſe of ſir ROBERT VERNON and JOHN CURZON, eſq; the ſcite of the monaſtery of Buildwas, and many lands thereto belonging. And that EDWARD GREY the baſtard, ſon of EDWARD lord Powis, (who claimed lord Powis's eſtate by virtue of a deed of feoffment and a will pretended to be made in his favour by the lord Powis) after having maintained a conteſt at law with the VERNONS for many years, did, 10 JAC. I. purchaſe of JOHN CURZON, eſq; a moiety of Brockton grainge, and many other grainges and manors, ſome of which had been recovered from him by the VERNONS, and were part of lord Powis's eſtate. Obſervation.

'Tis alſo obſervable that the KYNASTONS never ſet up or pretended any right to the ſaid barony of Powis before this time; and although in an act of parliament made 27 ELIZ. in relation to fines and recoveries in Wales, there is a proviſo that the act ſhall not prejudice the right of HENRY and JOHN VERNON, and their heirs, concerning any fine levied or recovery ſuffered of any barony, *&c.* by EDWARD lord Powis; yet there is no ſaving for the KYNASTONS. 27 ELIZ. Cap. IX. Sect. XI.

Wherefore, and for divers other reaſons, the ſaid ſir NATHANIEL CURZON humbly hopes, it will appear that the ſaid JOHN KYNASTON hath no right to the ſaid barony; but that the ſame is deſcended in fee unto the ſaid ſir NATHANIEL CURZON, DIANA VERNON, and HARRIOT VERNON, as the coheirs of EDWARD the laſt lord Powis.

Sir

Sir NATHANIEL CURZON's pedigree.



The houſe of peers heard counſel ſeveral days on the claims to this barony of Powis, but the ſame is not yet determined.

NUMB. IV.

In the Aſhmolean collection, *ſub tit. juridici*, 7844. 862. p. 509.

That by the laws of the realm, dignities conferred by the King's writ of ſummons to parliament deſcend to females, where there is a ſole heir and not coheirs; and that the alienation of poſſeſſion cannot alter the law.

1. THE common law knoweth but one eſtate of inheritance, and that is fee-ſimple, which deſcendeth ever to females, in default of males.

2. The call by writ is an ennobling of the blood, and therefore deriveth the nobility, as the blood is derived, and hath no eſpecial words of limitation to what heirs, as letters patents have; and therefore the law intends the heirs general, ſuch as the common law knoweth for an heir.

3. The ſtatute of entail was made 13 EDW. I. the call by writ was in uſe *temp.* HEN. III. and before, and therefore could be no entail to be called ſo, for that ſuch manner of calling was before there was any entail.

4. An entail muſt begin in a preciſe and expreſs form of gift contained in a deed, for he is tenant *per formam doni*, and therefore no entail can be of a dignity by writ, but by patent, or act of parliament.

5. The deſcent of a fee-ſimple in law hath its certain limitations at firſt ever lineal, and for want of ſuch, then to the collateral, but never before; for the deſcent of a fee-ſimple is never carried to an heir ſpecial collateral before the lineal.

6. There was never yet ſo much as a cuſtom heard of in any part of the realm, that excludeth females, though in other points, diverſe cuſtoms croſs the courſe of deſcents at the common law.

7. The deſcent to heirs females is not reſtrained to corporal inheritance only, but extendeth alſo to incorporal, as offices, liberties, and the like, even to the higheſt offices in England, that a ſubject can bear; as HUMPHRY DE BOHUN earl of Hereford and earl of Eſſex, held certain manors of the King to be conſtable of England; and he had iſſue two daughters, and died, and it was holden by the judges of England, upon a claim made by EDWARD the laſt duke of Buckingham, 6 HEN. VIII. that before marriage they might make a ſufficient deputy to exerciſe this office for them, and that after marriage the husband of the eldeſt daughter might exerciſe it alone. DYER 285, b.

8. Though females cannot execute the attendance in parliament, yet the law doth never take away a right where the diſablement cometh by the act of God, and not by the default of the party. And therefore if an annuity be granted to me *pro conſilio impenſo & impendendo*, if I refuſe to give counſel, my annuity ceaſeth, but if I be ſick or committed to priſon, I cannot give counſel, and my annuity ceaſeth not.

9. So if a baron refuſe to attend in parliament, or neglect it without licence or excuſe, the dignity may perhaps be forfeited, but if it deſcend by the act of God to a perſon for ſome defects incapable, this is no determination of the dignity; and therefore infants, ideots, and the like, are capable of the dignity to retain, in right, though they cannot perform the ſervice indeed.

The office of an earl marſhal or the tenure by being champion at the coronation is as incompatible with that ſex as to be a counſellor in parliament, or rather more; and yet they have been ruled to deſcend to females; and ſo is the championſhip at this day deſcended to ſir EDWARD DYMMOCK.

That there may be a perſon that can grant, or tranſmit to his iſſue, which is not in him to hold or uſe: And therefore the King may have an office

by grant, or by forfeiture, to be in him to grant over, yet he cannot officer to any man.

There hath been four queſtions heretofore, in all which it hath been admited *pro confeſſo*, that dignities veſted by call of writ, deſcend to one ſole heir being female.

The one, whether the husband that marrieth with an heir to a dignity, may claim that dignity *in jure uxoris*, and the inconvenience hath been alledged, becauſe he may be then noble to day and not to morrow in caſe his wife die.

The ſecond, the ſame queſtion, put ſomewhat further, and that is, allow ſuch husband having iſſue by ſuch inheritreſs, whether the law of tenancy by the courteſy ſhall not take place as well in dignity as in land.

The third, whether if the laſt baron have a ſiſter by the whole blood, and brother by the half blood, in regard a dignity is not a thing material, whether the maxim of *poſſeſſio fratris* ſhall take place.

The fourth, whether a dignity is to deſcend to divers copartners, becauſe it's inconvenient that dignities ſhould multiply above the intention of the King's grant; and again, becauſe a dignity is a thing intire, therefore whether it ſhall be divided, or whether it ſhall go only to the eldeſt, or whether it ſhall be to ſuch one as the King ſhall elect, or whether it ſhall extinguiſh.

All which four queſtions are pregnant, that it was taken for granted, if dignities did *de jure* deſcend to a female, where there is but one, and accordingly are the precedents by far of moſt of the houſes of this realm.

Now for the alienation of the poſſeſſions; Firſt it hath been proved that a call by writ is of as equal force to make a female inheritable, as a creation; and that is the moſt ancient manner of creation. And then who will deny, that if by letters patents the King grant the dignity to a man and to his heirs, and to the heirs general of his body, though all the land be conveyed away, either by the collateral heir, or to a ſtranger, yet the dignity deſcendeth according to the limitation of the patent? for by the alienation of the land, he cannot make an alienation or determination of the dignity.

Thirdly, if it paſs away with the land, it muſt either be carried or extinct by the land alienet, whereof the dignity bears addition, or by the poſſeſſions generally; if by the former, what ſhall be ſaid of baronies that are denominate only by name of family, or of counties, that are additions of a place? If by the latter, then by how much of the poſſeſſions, and where will you ſtay your proportion?

If in caſe where the eſtate hath been incompetent to maintain the dignity, there as well males as females have forborn, and ſometimes there have been compoſitions, ſo as by non claim and diſcontinuance the right hath been either deferred or determined, yet that proves nothing againſt ſuch as have good competency of living, and make their claim, and in time.

And for precedents, the infinite precedents of deſcents to females do expound the law, and then you cannot inſiſt upon any difference, for that claim is not by precedents but by the law expounded by precedents.

No precedent cometh full and to the point, on the other ſide, except it hath theſe parts.

That there was but one heir female and not coheirs.

That ſuch heir hath competency of eſtate *viz.* 20 knights fees.

That ſuch heir hath made claim.

That the ſame claim hath not been extinguiſhed, diſcontinued, or compounded but by judgment over-ruled.

And whereas precedents are inferred againſt the courſe of the common law, they muſt be as cuſtoms or preſcriptions are, that is many, and full, and without any interruption of precedent to the contrary, or elſe they prove not.

Where precedents have been that both the heir general and the heir male have been called to the dignity, as the firſt ought of right, and the other may be by grace, the heir general hath always had the ſuperior place, which ſheweth the other was extraordinary, and but of favour.

In all this allegation her Majeſty's prerogative to give allowances to dignities is not queſtioned: But the queſtion is of the right between two ſubjects, the female heir general, and the male heir collateral, and females proved to be in the ſame caſe with males, whereſoever the call is by writ.

NUMB. V.

A note of ſome precedents as come neareſt the caſe of the lord Brackley, by the lord chancellor BACON.

BACON's works, vol. IV. p. 657, 658.

THE lord Hay was created baron of Sawley, 28 *Junij*, 13 *Regis*, without the ceremony of robing, (as I take it) but then the patent was (as I conceive it alſo) delivered to the perſon of the ſaid lord Hay by the King's own hands; and again, the dignity of a baron hath incident to it, only the ceremony of robes, and not the cincture of the ſword, coronet, *&c.*

The duke of Lenox was created earl of Richmond, 6 *Octobris* 11 *Regis*, without any of the ceremonies (as I take it) but the patent (as I conceive it alſo) was delivered to the perſon of the ſaid duke, with the hands of the King: And again, in regard he was inveſted of the ſuperior dignity of duke of Scotland, the ceremonies were not ſo fit to be iterated.

King HENRY VII. created EDWARD COURTENAY, knight, earl of Devon, 26 *Octobris* 1 *regni*, *teſte meipſo apud Weſtmonaſterium*, *&c.* Whereby it may be collected, that it was done without the ſolemnities; for that where the ſolemnities were performed, it hath uſed to be with a *hiſce teſtibus*, and not *teſte meipſo*; and whether it were delivered with the King's hand or not, it appears not.

EDWARD VI. created WILLIAM earl of Eſſex marquis of Northampton, 16 Feb. EDW. VI. and it is mentioned to be *per cincturam gladii*, *cappam honoris*, *& circuli aurei impoſitionem*; but whether the delivery was by the King's own hand *non conſtat*, but it was *teſte meipſo*, and not *hiſce teſtibus*.

The ſame King created JOHN viſcount L'Iſle earl of Warwick the ſame time, and it is mentioned to be *per cincturam gladij*, *&c.* but it was *teſte meipſo* and not *hiſce teſtibus*.

EDWARD VI. created THOMAS, lord Wriotheſly, earl of Southampton in the ſame day, and in the ſame manner, with a *teſte meipſo* and not *hiſce teſtibus*.

Theſe three creations being made upon one day, and when the King was a child of about nine years old, and in the very entrance of his reign, for the patents bear date at the Tower of London, doth make me conjecture that all the ſolemnities were performed; but whether the King endured to be preſent at the whole ceremony, and to deliver the patents with his own hand, I doubt; for that I find that the very ſelf ſame day, year, and place, the King created his unkle, the earl of Hartford, to be duke of Somerſet, *per cincturam gladij*, *cappam honoris*, *& circuli aurei impoſitionem & traditionem virgulæ aureæ*, with a *hiſce teſtibus*, and not *teſte meipſo*, and with a *datum per manus noſtras*; yet theſe things are but conjectural.

I find no precedents for a *non obſtante*, or a diſpenſation with the ſolemnities, as the lord Brackley's bill was penned.

NUMB.

Barony of *OGLE.*

NUMB. VI.

Dugdale's baronage, Vol. III. p. 264.

CUTHBERT lord Ogle, dying 39 ELIZ. leaving iſſue two daughters his heirs, JOAN, married EDWARD TALBOT, a younger ſon to GEORGE, earl of Shrewsbury, but died without iſſue; and CATHERINE OGLE married to ſir CHARLES CAVENDISH of Welbeck, *com' Nott.* knight; which CATHERINE, ſurviving her ſiſter, and thereupon being ſole heir, in 4 CAR. I. obtained ſpecial letters patents from that King, under his great ſeal, bearing date 4 Decemb. the ſame year, declaring her to be baroneſs Ogle of Ogle, in *Com. Northumb.* as alſo ratifying that title of honour to her and her heirs for ever.

E. COLL. GREG. KING Lanc. herald.

REX &c. archiepiſcopis, ducibus, marchionibus, comitibus, vicecomitibus, epiſcopis, baronibus, militibus, præpoſitis, liberis hominibus & omnibus officiariis, miniſtris & ſubditis noſtris quibuſcunque, ad quos præſentes literæ pervenerint, ſalutem. Cum CUTHBERTUS OGLE, nuper de Ogle in comitatu noſtro Northumbriæ, miles, dum vixit fuit baro Ogle de Ogle prædict. atque de nomine, ſtatu, titulo, ſtilo, dignitate, & honore baronis Ogle de Ogle prædict. ſeiſitus fuit, ut de feodo ſibi & heredibus ſuis imperpetuum, & ratione ejuſdem nominis, ſtatus, gradus, tituli, ſtili, dignitatis & honoris baronis Ogle de Ogle prædict. tam ipſe CUTHBERTUS, quam anteceſſores ejus complures perpetua & continua; alter ſcilicet eorum poſt mortem alterius reſpective ſummoniti fuerint ad parliamentum regni noſtri Anglie pro tempore exiſten. ut ceteri, & inter ceteros barones regni noſtri Anglie prædict. ut barones regni noſtri Anglie prædict. & habuerint, tenuerint, & poſſiderint vocem & locum in dictis parliamentis ſicut ceteri barones regni noſtri Anglie prædict. habere ſolent & debent, atque omnibus aliis ejuſmodi privilegiis, præheminentiis, immunitatibus & juribus quibuſcunque reſpective uſi ſunt & gaviſi, quibus ceteri barones regni noſtri Anglie prædict. melius, honorificentius, & quietius utuntur & gaudent ſive uti & gaudere debent. Et cum dictus CUTHBERTUS ſic inde ut prædictum eſt ſeiſitus exiſtens obierit, & poſt mortem ejus JANA OGLE, & CATHERINA OGLE filie dicti CUTHBERTI fuerint coheredes ejuſdem CUTHBERTI, quarum quidem cohæredum, JANA prædict. poſtmodum & nuper comitiſſa dotaria Salopie exiſtens, obiit ſine exitu de corpore ſuo procreato; unde evenit, ut dicta CATHERINA adhuc ſuperſtes (que ſcilicet vidua eſt CAROLI CAVENDISH nuper de Welbeck in comitatu noſtro Nott. militis, & mater præchariſſimi conſanguinei noſtri WILLIELMI comitis Newcaſtle ſuper Tinam) ſit & remaneat ſola & unica hæres dicti CUTHBERTI nuper baronis Ogle de Ogle ut prædictum eſt: Sciatis igitur quod nos de gratiâ noſtra ſpeciali, ac ex certa ſcientia & mero motu noſtris, pro nobis, hæredibus & ſucceſſoribus noſtris, recognoviſſe, declaraſſe, manifeſtaſſe, acceptaſſe, conceſſiſſe, & confirmaſſe, & per præſentes literas noſtras patentes, recognoſcere, declarare, manifeſtare, acceptare, concedere & confirmare dictam CATHERINAM unicam nunc dicti CUTHBERTI ut prædictum eſt, hæredem eſſe & fore baroniſſam Ogle de Ogle prædict. & ratione ejuſdem nominis, ſtatus, gradus, tituli, ſtili, dignitatis, & honoris eſſe vel fore baroniſſam regni noſtri Anglie prædict. Habend. tenend. & gaudend. ſtatum, gradum, dignitatem & honorem prædict. ſibi prædict. CATHERINE, & hæredibus ejus imperpetuum. Volentes inſuper, recognoſcentes, declarantes, concedentes & confirmantes, quod dicta CATHERINA, nomine, ſtatu, gradu, ſtilo, titulo, dignitate, & honore, baroniſſe Ogle de Ogle prædict. atque heredes ejus imperpetuum reſpectivè nomine, ſtatu, gradu, ſtilo, titulo, dignitate, & honore ſive baronis ſive baroniſſe Ogle de Ogle prædict. reſpectivè ut baroneſſive baroniſſe reſpectivè regni noſtri Anglie

Anglie prædict. nuncupentur & vocitentur; & quod dicta CATHERINA & heredes ejus, reſpectivè barones ſive baroniſſe Ogle de Ogle prædict. gaudeant & utantur, & quilibet eorum reſpectivè gaudeat & utatur imperpetuum, per nomen, ſtatum, gradum, ſtilum, titulum, dignitatem & honorem baronis ſive baroniſſe Ogle prædict. reſpectivè omnibus & ſingulis & ejuſmodi juribus, privilegiis, preheminentiis & immunitatibus ſtatui baronis ſive baroniſſe reſpectivè ritè & de jure pertinen. qualibus & cujuſmodi ceteri barones & baroniſſe regni noſtri Anglie prædict. reſpectivè ante hec tempora melius, honorificentius, & quietius uſi ſunt & gaviſi, ſeu olim gaudeant & utebantur; & inſuper quod dicta CATHERINA & heredes ejus imperpetuum ratione dictorum nominis, ſtatus, gradus, tituli, ſtili, dignitatis & honoris reſpectivè in omnibus conceſſibus atque locis quibuſcunque tali & non alio loco & ſeſſionis gradu, atque tali precedentia utantur & gaudeant, & quilibet eorum ut barones & baroniſſe Ogle de Ogle prædict. reſpectivè utatur & gaudeat, quali utebatur & gaudebat, ſeu uti & gaudere debuit dictus CUTHBERTUS pater dictæ CATHERINE (cujus hæres ipſa eſt) dum vivebat, & dictum nomen, ſtatum, gradum, ſtilum, titulum, dignitatem & honorem baronis Ogle de Ogle tenuit & poſſedit ut prædictum eſt; volentes porro, recognoſcentes, declarantes, manifeſtantes, concedentes & confirmantes, pro nobis, heredibus & ſucceſſoribus noſtris, quod omnes & ſinguli futuri heredes dicte CATHERINE qui maſculi fuerunt, adeoque barones Ogle de Ogle prædict. jure impoſterum nuncupand. & vocitand. habeant, teneant, poſſideant, & quilibet eorum habeat, teneat & poſſideat locum & vocem in parliamentis regni noſtri Anglie ptædict. & in conſiliis & publicis comitiis, ut barones regni noſtri Angliæ prædict. & inter ceteros barones regni noſtri Anglie prædict. eodem modo ac eodem ſeſſionis gradu, & in eodem loco, quo CUTHBERTUS prædictus, dum nomen, gradum, ſtatum, titulum, ſtilum, dignitatem & honorem baronis Ogle de Ogle prædict. ut prædictum eſt, tenuit & poſſedit locum & vocem in parliament. dicti regni noſtri habuit, tenuit & poſſedit, aut habere, tenere, & poſſidere debuit, aut ſicut al. barones parliament. regni noſtri prædict. melius, honorificentius & quietius locos ſuos & voces in parliament. dicti regni noſtri habent, tenent, & poſſident, aut habere, tenere & poſſidere debent. Volumus, &c. abſque fine in hanaperio, &c. Eo quod expreſſa mentio, &c. In cujus rei, &c. Teſte Rege apud Weſtm. quarto die Decembris, anno regni regis CAROLI Anglie, &c. quarto.

Per breve de privato ſigillo.

NUMB. VII.

Precedents where baronies by writ have been ſolemnly declared and adjudged in favour of the heir general; drawn up by Mr. GREG. KING, Lancaſter herald.

By the King.

1. SIR RICHARD FENYS, knight, chamberlain to king EDWARD the IVth, having married JOAN, daughter and ſole heir of THOMAS, eldeſt ſon of THOMAS, lord Dacre, was by reaſon thereof by patent dated 7 November, 37 HEN. VI. accepted and declared lord Dacres, and was ſummoned to parliament by that title, from 38 HEN. VI. till 22 EDW. IV. incluſive; whereupon the heir male was forc'd to be contented with the title of lord Dacres of Gilleſland to him and his heirs male, as being poſſeſſed of the lands belonging to the ſaid barony, and ſate in the parliament next below the ſaid ſir RICHARD FENYS, lord Dacres.

By the lords commiſſioners for the office of earl marſhal.

2. SAMPSON LENNARD, eſq; having married MARGARET, ſiſter and heir to GREGORY FIENES, lord Dacres, lineal heir to the abovementioned ſir RICHARD

FIENES, and making claim to that honour, it was declared and adjudged by the lords commiſſioners for the office of earl marſhal (*conſenſu Regis, anno* 1 JAC. I.) that ſhe the ſaid MARGARET ought to have and enjoy the name, ſtate, degree, ſtile, honour, place and precedency of the barons Dacre, to have and to hold to her and the iſſue of her body, in as ample manner as any of her anceſtors did enjoy the ſame, which title of lord Dacres was afterwards confirmed to HENRY LENNARD her ſon and heir, and is now enjoyed by the preſent earl of Suſſex.

By the commiſſioners for earl marſhal.

3. THOMAS, lord Dacres of Gilleſland, died without iſſue 17 *Maij anno* 1569. 11 ELIZ. leaving his three ſiſters his heirs, which three ſiſters were afterwards married to three of the ſons of THOMAS, duke of Norfolk; whereupon LEONARD DACRES, the heir male, claimed the barony; but the lords commiſſioners for the office of earl marſhal, declared that a baron in fee having two ſons, the eldeſt having three daughters, the barony ſhall not deſcend to the heir male collateral, ſo long as there are heirs general; which reſolution is found in judge HALES's manuſcript in Lincolns-Inn.

By the King.

4. RICHARD BERTIE, eſq; having married CATHERINE, ſole daughter and heir to WILLIAM, the laſt lord Willoughby of Eresby, had iſſue by her a ſon called PEREGRINE, who ſoon after the death of his mother, was ſummoned to parliament by the title of lord Willoughby of Eresby, and took his place in the houſe, according to the ſeniority of that honour; whereupon the heir male was obliged to accept of a new barony, and was created lord Willoughby of Parham, to him and his heirs male; which ſaid title of lord Willoughby of Eresby, is now enjoyed by the earl of Lindſey.

By the King.

5. MOUNTAGU BERTIE, earl of Lindſey, married to his ſecond wife, BRIDGET, daughter and ſole heir to EDWARD WRAY, eſq; by the lady ELIZABETH his wife, daughter and ſole heir of FRANCIS, lord Norres, and earl of Berkſhire, by whom he had iſſue JAMES BERTIE, eſq;, who by right of deſcent from his grandmother, was declared lord Norres by king CHARLES the ſecond, *an.* 1669. and is ſince created earl of Abingdon.

In parliament.

6. CATHERINE, daughter of GEORGE, lord Aubignie, fourth ſon of ESME STUART, duke of Richmond, and CATHERINE his wife, daughter and ſole heir to GERVASE, lord Clifton of Leighton Bromſwold, making her claim to the title and dignity of baroneſs Clifton, as ſole heir to the ſaid CATHERINE, her grandmother, had her claim allowed in parliament *anno* 1674.

By the King, but the title of viſcount Hereford was allowed in parliament *anno* 1689. ſo he is only without a barony.

7. ROBERT DEVEREUX, the late earl of Eſſex, viſcount Hereford and lord Ferrers of Chartley, died without iſſue 14 Septemb. *anno* 1646, leaving his two ſiſters his heirs; whereupon the viſcountſhip by virtue of the entail on the heir male, devolved to ſir WALTER DEVEREUX, knight and baronet, and is now enjoyed by EDWARD, viſcount Hereford his ſon; but *in anno* 1678. ſir ROBERT SHERLEY, baronet, grandſon of the lady Frances, one of the ſiſters and heirs to the forementioned ROBERT, earl of Eſſex, obtained a declaration from king CHARLES the ſecond, of the barony of lord Ferrers of Chartley to him and his heirs, together with the ſame place and precedence in parliament, as the ancient barons Ferrers.

By the earl marſhal.

8. WILLIAM CECIL, earl of Exeter, married ELIZABETH, daughter and ſole heir of EDWARD MANNERS, earl of Rutland and lord Roſs, by whom he had iſſue WILLIAM CECIL, eſq; his ſon and heir, who in 13 JAC. I. uſing the ſaid title of lord Roſs, the earl of Rutland diſputed it before the lords commiſſioners for the office of earl marſhal; yet however they adjudged that title to CECIL againſt the heir male, and CECIL had the King's declaration thereupon, dated 22 July 14 JAC. I.

In parliament.

9. HENRY, earl of Kent and lord Grey of Ruthyn, died without iſſue *anno* 1639. leaving SUSAN his ſiſter, wife of ſir MICHAEL LONGVILE, knight, his ſole heir; whereupon the earldom of Kent deſcending to the heir male, by virtue of the entail, the barony of Grey of Ruthyn was claimed by CHARLES LONGVILE, eſq; ſon and heir to the forementioned SUSAN; and after long diſpute in parliament, *anno* 1640. he had it adjudged to him againſt the earl of Kent the heir male, and was thereupon ſummoned to parliament by that title, by writ dated 6 Feb. 16 CAR. I.

Heard in parliament, but determined at the council table, upon the opinions of the judges, and the King's council.

10. Sir HENRY MILDMAY, knight, (ſon and heir of ſir THOMAS MILDMAY, knight, by the lady FRANCES his wife, daughter of HENRY RATCLIFFE earl of Suſſex and lord Fitzwalter, couſin and heir of the half blood to ROBERT, the laſt earl of Suſſex, who died without iſſue *anno* 1629.) by right of deſcent from his mother, claimed the barony of Fitzwalter in parliament, *anno* 1640: but by reaſon of the troubles, there was nothing done therein till after the reſtoration of king CHARLES the ſecond; that HENRY MILDMAY, eſq; grandſon and heir of the ſaid ſir HENRY, petitioned the King for the ſaid barony, which claim being continued by BENJAMIN MILDMAY, eſq; brother and heir of the ſaid HENRY, it was at laſt ſolemnly adjudged to him *anno* 1669.

NUMB. VIII.

Baronies by writ, claimed and allowed from the reign of king CHARLES the firſt, *anno* 1625. to 1692.

Anno 1640. The barony of Grey of Ruthyn allowed to CHARLES LONGVILE, eſq; as the iſſue of a ſole heireſs.

1667. The barony of Roſs to the duke of Bucks, as the iſſue of a ſole heireſs.

1669. The barony of Fitzwalter, to BENJAMIN MILDMAY, eſq; as the iſſue of a ſole heireſs.

1674. The barony of Clifton of Leighton Bromſwold, to the lady CATHERINE O BRIEN, as the iſſue of a ſole heireſs. E. COLL. S. STEBBING, Somerſet Herald.

1691. The barony of Clifford to the earl of Thanet, as the iſſue of a ſurviving coheir.

So that in 60 years laſt paſt, there have been but two baronies by writ, admitted to perſons that were not peers, and thoſe two, were the iſſue of a ſole heireſs to the baronies, to which they were ſo admitted.

FINIS.

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